



















# AMERICAN STATUTE LAW

VOLUME II.

AN ANALYTICAL AND COMPARED DIGEST OF THE STAT-  
UTES OF ALL THE STATES AND TERRITORIES  
RELATING TO GENERAL AND BUSINESS  
AND PRIVATE

## CORPORATIONS

IN FORCE JULY 1, 1892

BY

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BOSTON  
THE BOSTON BOOK COMPANY

1892

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University Press :  
JOHN WILSON AND SON, CAMBRIDGE.



## P R E F A C E.

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THE first volume of this work appeared in 1886, and covered the State Constitutions and the general law of persons and property. A new edition of this volume is in preparation, bringing it down to date. This second volume is concerned with the general law of private corporations only, it having been deemed by the author unwise, if not impossible, to attempt to present a similar code of municipal corporations, they being so generally throughout our States the subject of special statutes. With a third volume on Adjective Law (including the probate codes and civil procedure, insolvency, etc.) and Criminal Law, the work undertaken should end.

The reader is referred to the Preface to Volume I. for the reasons which have guided the author in selecting such subjects as were to be omitted in order to bring the work within reasonable compass. Owing to the nature of the subject, the several state statutes have been copied literally much more often in this than in the preceding volume. Hence there has been less compression; and it has been found necessary to omit from this volume the special statutes affecting insurance corporations, and the law of religious, educational, and similar corporations. But every statute affecting corporations generally, business corporations, manufacturing companies, and the like, railroads, and trusts, has, it is believed, been incorporated herein.

In using this book, the reader should first refer to the titles following the general corporation act (Title I.), and containing the law of railroads, manufacturing companies, etc. (if the corporation in which he is interested belong to any such special class), as the provisions of law made concerning a special kind of corporation commonly control those of the general act. If he find no such provision, he may safely turn to the statute as set forth in Title I., — the general act, — and assume it to be the law governing any class of corporation as therein set forth for the State or Territory in question.

BOSTON, September 29, 1892.



## EXPLANATORY NOTE.

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IN order to attain the conciseness required in this work without obscurity, the writer has adopted a few contrivances which will be easily understood when the reader's attention is once called to them. In the first place, the division for citation purposes is always into article and section, the article number being always the decimal of the section, and both are continuous throughout the book; and gaps in the numbering are thus left at the ends of the articles and chapters. This is done both for convenience of citation, and in order to enable future editions of this book to be printed, incorporating changes and additions in the state laws without changing the numbering of any section or article of the present edition. Thus, Article 414 is the Statute of Frauds; and any special provision will accordingly be numbered from § 4140 to § 4149. Article 415, § 4150, succeeds, whether all these numbers are used in this edition or not.

Many abbreviations are used, but will all be found in the table in Vol. I. As further expedients to save space, citations of consecutive numbers are clearly indicated, but not written in full; thus §§ 4372-7 is printed instead of §§ 4371, 4372, 4373, 4374, 4375, 4376, 4377; and frequently when the same state statute runs through an article of this book, the abbreviation *ib.* is employed, referring the reader to the first place where the law is cited in that article, and thus avoiding innumerable repetitions of it. The same citation is not repeated in the same section of this work, but the abbreviation for the state is deemed sufficient; the reader, in all such cases, being expected to look just above for the reference to the chapter and section. The note references are the small letters *a, b, c*, etc., but when the same notes are referred to continually throughout all of one article or chapter in this book, they are printed as notes to the article or chapter, at the beginning of it, and such notes are always referred to by the note signs \*, †, ‡, etc. The word *state* ordinarily includes any state or territory; but when printed with a capital letter the word *State* always means the home state, or the state whose laws are referred to, as distinct from others.

Finally, the states are usually cited in the following order, which experience has shown to be the most convenient, viz.: New Hampshire, Massachusetts, Maine, Vermont, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Iowa, Minnesota, Kansas, Nebraska (Northern States); Maryland, Delaware, Virginia, West Virginia, North Carolina, Kentucky, Tennessee, Missouri, Arkansas, Texas (Middle States); California, Oregon, Nevada, Colorado, Washington, the Dakotas, Idaho, Montana, Wyoming, Utah (Western States); South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, New Mexico, Arizona (Southern States); the District of Columbia. The abbreviations employed are those ordinarily in use; except that *Io.* is used for Iowa instead of *Ia.*, it being found that

the latter was in great danger of being confounded with Louisiana, owing to its close resemblance to La. in the type. For the same reason Uta. is used for Utah, to avoid too great a similarity with Vt. used for Vermont. The abbreviation U.S. in citations refers to the United States Revised Statutes; or to the United States annual laws if followed by a year number.

In conclusion, the author would remind the reader that when he fails to find the laws of the state of which he is in search upon any subject, it will be because such state has no statute upon the question; but it does not follow that the law as administered in the courts is not the same as in the states quoted. Generally the states follow the common law (see § 1003), or the law of that neighboring or older state to which they are historically related (see citation order above, and the remarks made in the Table of Citations). The California and Georgia provisions will be often a useful guide in determining the common law upon any subject, as will be the Louisiana codes for the civil law.

## TABLE OF STATE CITATIONS.

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New Hampshire, Massachusetts, Maine, Rhode Island, Illinois, Kansas, Nebraska, Maryland, Delaware, West Virginia, Kentucky, and Florida are cited by chapter and section number.

Vermont, Connecticut, Ohio, Indiana, Michigan, Wisconsin, Iowa, Minnesota, Virginia, North Carolina, Tennessee, Missouri, Arkansas, Texas, California, Oregon, Nevada, Colorado, Washington, Idaho, Wyoming, Utah, South Carolina, Georgia, Alabama, Mississippi, the District of Columbia, New Mexico, Arizona, and Oklahoma, are cited by continuous section number.

New York is cited by Part, Chapter, Title, or Article, and section, as in Banks & Brothers' editions; New Jersey and Pennsylvania, by abbreviated name of chapter in the digests, and section. The Dakota Codes, still in force in North and South Dakota, are cited by continuous section number with the Code abbreviation. So of the Montana Codes and General Laws and Louisiana.

The annual laws of Massachusetts, Rhode Island, New York, New Jersey, Ohio, South Carolina, and Georgia, and the biennial laws of all the other States, are cited by year, chapter, and section; except in Ohio, Illinois, and a few other States, where, the chapters not being numbered, it is necessary to cite by referring to year and page, the abbreviation "p." being always inserted in such cases.

The editions and annual or biennial volumes of laws incorporated in this volume are as follows:—

**New Hampshire.** Public Statutes, 1892.

**Massachusetts.** Public Statutes, 1881. Annual Laws, 1882-1892.

**Maine.** Revised Statutes, 1883. Biennial Laws, 1885, 1887, 1889, 1891.

**Vermont.** Revised Laws, 1880. Biennial Laws, 1882-1890.

**Rhode Island.** Public Statutes, 1882. Annual Laws, 1883-1892 (two sessions).

**Connecticut.** Public Statutes, 1887. Biennial Laws, 1889, 1891.

**New York.** Banks & Brothers' Revised Statutes, 7th or 8th edition. Annual Laws, 1882-1891.

**New Jersey.** Revision of 1877, and Supplement, 1886. Annual Laws, 1887-1892.

**Pennsylvania.** Brightly's Purdon's Digest, 1883. Biennial Laws, 1883-1891.

**Ohio.** Revision of 1890. Annual Laws, 1890-1892.

**Indiana.** Myers's Revised Statutes, 1888. Biennial Laws, 1883-1891.

**Illinois.** Hurd's Revised Statutes, 1889. Biennial Laws, 1890 (Ex. Sess.), 1891.

**Michigan.** Howell's Statutes, 1882, and Supplement, 1890. Biennial Laws, 1883-1891.

**Wisconsin.** Sanborn & Berryman's Statutes, 1889. Biennial Laws, 1885-1891.

**Iowa.** McClair's Code (old citations). Biennial Laws, 1882-1890.

- Minnesota.** Kelly's General Statutes, 1891. Biennial Laws, 1889, 1891.
- Kansas.** Taylor's General Statutes, 1889. Biennial Laws, 1891.
- Nebraska.** Compiled Statutes, 1885. Biennial Laws, 1887, 1889, 1891.
- Maryland.** Public General Laws, 1888. Biennial Laws, 1890, 1892.
- Delaware.** Revised Code, 1874. Biennial Laws, Vol. 15 (1875, 1877), Vol. 16 (1879, 1881), Vol. 17 (1883, 1885), Vol. 18 (1887, 1889), Vol. 19 (1891).
- Virginia.** Code, 1887. Laws, 1887-88, 1889-90, 1891-92.
- West Virginia.** Warth's Code, 1887. Biennial Laws, 1887, 1889-90.
- North Carolina.** Code of 1883. Biennial Laws, 1885-1891.
- Kentucky.** General Statutes, 1888. Biennial Laws, 1888, 1890. Carroll's Codes, 1889, 1890.
- Tennessee.** Milliken & Vertrees' Code, 1884. Biennial Laws, 1885, 1887, 1889, 1890 (Special Sess.), 1891.
- Missouri.** Revised Statutes, 1889. Biennial Laws, 1891. Extra Sess., 1892.
- Arkansas.** Digest of 1884. Biennial Laws, 1885-1891.
- Texas.** Revised Statutes, 1879. Laws, Biennial and Extra, 1879-1891.
- California.** Deering's Codes. Biennial Laws, 1887-1891.
- Oregon.** Hill's Laws, 1887. Biennial Laws, 1889, 1891.
- Nevada.** General Statutes, 1885. Biennial Laws, 1887, 1889, 1891.
- Colorado.** General Statutes, 1883. Biennial Laws, 1885-1891.
- Washington.** Code of 1881. Biennial Laws, 1883, 1886, 1890, 1891.
- North Dakota.** Levisse's Dakota Codes. Dakota Laws, 1885, 1887, 1889. North Dakota Laws, 1890, 1891.
- South Dakota.** Levisse's Dakota Codes. South Dakota Laws, 1890, 1891.
- Idaho.** Revised Statutes, 1887. Biennial Laws, 1889, 1891.
- Montana.** Compiled Statutes, 1887. Biennial Laws, 1889, 1891.
- Wyoming.** Revised Statutes, 1887. Biennial Laws, 1888, 1890, 1891.
- Utah.** Compiled Laws, 1888. Biennial Laws, 1888, 1890.
- South Carolina.** General Statutes, 1882. Annual Laws, 1883-1891.
- Georgia.** Code, 1882. Annual Laws, 1883-1891.
- Alabama.** Code of 1886. Biennial Laws, 1887-1891.
- Mississippi.** Code of 1880. Biennial Laws, 1882-1892.
- Florida.** Digest, 1881. Biennial Laws, 1883-1891.
- Louisiana.** Voorhis' Revised Laws, 1884 (cited D). Civil Code, 1875. Biennial Laws, 1887, 1889, 1890.
- New Mexico.** Compiled Laws, 1884. Biennial Laws, 1887-1891.
- Arizona.** Revised Statutes, 1887. Biennial Laws, 1889, 1891.
- Oklahoma.** Statutes, 1890.
- District of Columbia.** Revised Statutes (U.S.), 1873.
- United States.** Revised Statutes of 1873 as amended in 1878.

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# AMERICAN STATUTE LAW.

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## PART III.

### PUBLIC LAW.

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#### DIVISION I.—PRIVATE CORPORATIONS.

##### TITLE I.—GENERAL CORPORATIONS.

##### CHAPTER I.—INCORPORATION.

**Notes to Title I.—Part III.** For convenience, the following signs will be employed, to denote special exceptions to the rule stated in § 8000, throughout this title, viz. : \* Applies only to manufacturing corporations. \*\* Does not apply to manufacturing companies. † Applies only to railways. †† Does not apply to railway corporations. ‡ Applies to moneyed corporations only. || Includes banks. ||| Does not include banks. § Applies only to corporations for an internal improvement. §§ Does not apply to such. ¶ Applies only to life insurance companies. ¶¶ Does not apply to such.

#### **Art. 800. General Provisions.**

§ 8000. In this title it has seemed best to insert only the “general corporation act” of all the states and territories. Subsequent titles treat of the special varieties, such as railways, insurance companies, etc. It may commonly be assumed that the provisions of this title apply to other corporations, except where controlled by the particular enactments of their respective titles, or where otherwise noted. See *Notes* above. For the kinds of corporations that may in the several states be created under the general law (this title) see, in detail, section 8010. For an index to special statutes affecting particular classes of corporations not included in this book, see section 8499, at the end of this title.

§ 8001. **Application of this Title.** “The provisions of this chapter do not apply when special provision is made in the subsequent chapters of this title, but the special provision shall govern, unless it clearly appear that the provisions are cumulative; and no corporation shall, by anything in this title, be relieved from any liability in actions now pending, or causes of action heretofore accrued :” O. 3269.

“The provisions of this chapter, unless expressly limited in their application, shall apply to all corporations organized under or by the laws of this Commonwealth, except

so far as they are inconsistent with other provisions of these statutes concerning particular classes of corporations : " Mass. 105,1 ; Me. 46,1 ; N. J. Corps. 9.

Expressly including corporations organized under special acts or charters : Me.

The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto, inconsistent with some provision in this title, in which case the special provision prevails : Cal. 5403 ; Ida. 2652.

The act shall apply to all corporations created or formed, or doing business in this state, or the late territory of Nevada, prior to the passage of said act, and shall constitute the rule for the government and management of the affairs and business of such corporations : Nev. 830.

" This chapter shall be known as the general corporation law : " N. Y. 1890,563,1.

If any act shall hereafter be passed by the legislature of this state which shall by its terms enact that any person therein named or described shall be incorporated by any name and for any purpose therein stated, such corporation shall immediately be vested with and possessed of all powers in this act specified and set forth, subject to all provisions and restrictions therein contained, unless such special act incorporating the same shall otherwise in whole or in part direct to the contrary : N. J. Corps. 8 ; Del. V. 17,147,8.

This chapter, unless otherwise declared herein, or in the chapter entitled Railroads and Telegraphs, shall apply to all corporations, whether created by special act of assembly, by letters of agreement under this chapter, or by the chapter entitled Railroads and Telegraphs. And this chapter and the chapter on Railroads and Telegraph, so far as the same are applicable to railroad corporations, shall govern and control, anything in the special act of assembly to the contrary notwithstanding, unless in the act of the general assembly creating the corporation, the section or sections of this chapter, and of the chapter entitled " Railroad and Telegraph Companies," intended to be repealed, shall be specially referred to by number, and as such, specially repealed : N. C. 701.

" The rights, powers, and duties set forth in this chapter are incident to all corporations (1) legally constituted not excepted in the preceding section, subject to any limitations or restrictions imposed by the charters or laws authorizing the organization of particular corporations, whether voluntary or otherwise : " N. H. 148,2.

And (2) " to all corporations having for their object a dividend of profits, hereafter incorporated, or whose charters are by law subject to be altered, amended, or repealed, and their officers and members shall be governed by its provisions : N. H. 149,1.

" All Acts of incorporation hereafter granted shall be subject to the provisions of this chapter : " R. I. 152,17 ; N. J. Corps. 9 ; Md. 23,303 ; Del. V. 17,147, 9.

" So far as consistent with the act under which it is organized : " N. J., Md., Del.

All companies that may be hereafter established within this state under the provisions hereinabove contained, or under any law of this state, and also the officers of every such company, and the stockholders therein, may exercise the powers, and shall be governed by the provisions, and be subject to the liabilities hereinbefore and hereinafter provided : N. J. Corps. 14 ; Del. V. 17,147,15.

Every joint stock company which shall be hereafter organized, or commence its proper corporate business, or which shall accept the provisions of this chapter, or be declared subject thereto by act of legislature, shall, so far as it is not otherwise expressly provided, have the rights, powers, and privileges, and be subject to the regulations, restrictions, and liabilities specified in this and the preceding chapter : W. Va. 53, 10.

The provisions of this title do not apply to public municipal corporations, such as towns, cities, and the like : N. H. 148,1 ; Mo. 2541.



Or to public universities or schools : Mo.

The provisions of this chapter (i. e. §§ 496-513, Mon. G. L., concerning assessments of stock) shall only apply to such corporations hereafter formed, as shall specify in its articles of incorporation the fact that the stock of such corporation shall be assessable; and any company or corporation hereafter formed, that wishes to avail itself of the provisions of this chapter, and render its stock assessable, shall specify in its articles of incorporation, in addition to the statement now required by law, a statement to the effect that the stock of such corporation is assessable, and thereupon such company or corporation shall be liable to, and have the benefit of all the provisions of this chapter; but should the articles of such corporation contain no such statement, then the provisions of this chapter shall not apply to such company or corporation : Mon. G. L. 512. Compare § 8112.

**8002. Corporations now existing** shall continue to exercise and enjoy their powers and privileges according to their respective charters and to the laws now in force, and shall continue subject to all the liabilities to which they are now subject, except so far as said powers, privileges, and liabilities are modified or controlled by the provisions of these statutes : Mass. 105,2 ; W. Va. 52,23.

"Any company (formed under and pursuant to the Acts of 25th of February, 1846, or 2d of March, 1849, and the several supplements thereto,—N. J.) may come under and subject to the provisions and liabilities of this act, in the same manner as if formed under the same, if such company make a certificate under the hands of the president and directors of the company, that said company desires to come under the said provisions and liabilities; which certificate shall be acknowledged, recorded, and filed in the same manner as the certificate required by this act; (and such company, on the recording and filing of said certificate as aforesaid, shall be free from the liabilities and provisions of the said act under which said company was formed : N. J. ; ) *provided*, that nothing in this section contained shall be held to affect any transaction, liabilities, or debts of any such company heretofore done, accrued, or contracted : " N. J. Corp. 98 ; Supp. Corps. 56 ; Del. V. 17,147,43.

The Indiana Act of 1883 extends every private corporation then existing under a special charter for thirty years from the passage of the act, if existing before 1851, and provides for the change of place of business, election and number of directors, reduction or increase of capital stock, etc. : Ind. 3021 a-3021 e.

"Any corporation availing itself of or accepting the benefits of or formed under this act (except the mere change of name), shall be subject to the general laws of this state now in force, or which may hereafter be passed, regulating corporations of like character : " Ill. 32,53\*\*.

"Any corporation organized under any special charter or general law may amend its articles or charter according to the above provisions; and may, by a two-thirds stock vote, abandon its organization and organize under this chapter : " Wis. 1790.

So, by a majority vote : Pa. Corp. 13.

By a three-fourths vote; or written consent of three-fourths of the stock; a certificate being filed, approved by the directors, with the secretary of state : Mo. 2509.

"Every corporation heretofore lawfully organized under any general law, for any of the purposes embraced in [§ 8010.] and existing at the adoption of these statutes, shall continue in existence in the same manner, and have the same powers, as if lawfully organized under this chapter, and be governed by these statutes; and every joint stock company organized under the provisions of Wis. Rev. Stats. of 1858.73, prior to the first day of January, 1875, shall be deemed legally organized, and remain in existence with the rights and privileges granted thereby, unaffected by the repeal thereof. Whenever articles of association have heretofore, and since the passage of said chapter, been filed in the office of the secretary of state, or in the office of the register of deeds,

for any of the purposes for which corporations may be formed under said chapter, and an organization has been formed under and pursuant to said articles, such organization is hereby declared to be legal, and the corporation to be duly organized; provided, such corporation, within six months after the passage and publication of this act, perfect its organization under the laws then existing:" Wis. 1791.

"Any corporation heretofore formed under the general laws or any special act, may cause itself to be incorporated under this article, provided the directors give notice to the stockholders as required in § 76 (§ 8122), and at the meeting so called there be present stockholders representing two thirds of the stock; and such notice shall be deemed to be a corporate Act, if signed by the persons who were directors at the time, or a majority of them, and contain the particulars above directed; and shall have been published and communicated to the stockholders:" Md. 23,81-82.

If at such meeting the corporation so vote, the meeting shall then, or at any adjourned meeting, determine the number of shares of capital stock of the new company, the rule of apportionment, the persons who shall be entitled to hold the same, and the name of the new corporation; and the certificate shall be signed by the chairman of the meeting, showing the compliance with these requirements and the proposed name, the former name, the objects or purposes, the term of its existence, and the articles, conditions, and provisions under which the corporation is formed, the place of business, and principal office as in [Arts. 801, 802]: Md. 23,83.

This certificate signed and sworn to by the chairman, shall be signed by the president, sealed by the corporation, submitted to judicial inspection as required in § 43 (§ 8025) and certified and recorded with the consequences as in [Art. §02]; and the charter shall thereupon be deemed surrendered; and all property and assets and debts and liabilities devolved upon the new corporation; which shall for this purpose be regarded as substituted by operation of law, and all pending proceedings may be duly amended: Md. 23,84.

Nothing in this article contained shall be so construed as to bring within any supposed exemption from taxation, state, county, or municipal, in the charter of any company desiring to take advantage of any of the provisions in this article contained, any property, real, personal, or mixed, owned under or by virtue of any of the provisions of this article, or any stock, preferred or otherwise, or any bonds or other evidence of debt issued under or by virtue of any of the provisions of this Article: Md. 23,802.

"All rights, powers, and privileges heretofore granted by the general assembly of Virginia, or by the legislature of this State, to any joint stock company, which are not rendered invalid and of no effect by the preceding section [§ 8037], are hereby preserved to it:" W. Va. 53,5.

"Every joint stock company heretofore organized, and which has commenced its proper corporate business, under special charter or general law, shall remain subject to the laws now in force applicable thereto, unless it accepts the provisions of this chapter, or shall be declared subject thereto by act of the legislature:" W. Va. 53,9.

"The stockholders of any incorporated joint stock company now existing in this state may, by resolution in general meeting, accept the provisions of this and the preceding chapter of the code:" W. Va. 54,12. §§ §§.

"And the secretary of state shall thereupon issue a certificate reciting said resolution and statement, and declaring the corporation to be thereafter organized accordingly, and said corporations shall no longer be under their former charters, but shall have all the rights, privileges, and powers conferred by chapters 52, 53, and 54 of the West Virginia code, and shall be subject to the liabilities, restrictions, and regulations therein prescribed:" W. Va. 54, 12.

"And thereupon a copy of the resolution shall be filed with the secretary of state, together with a statement showing the name by which the corporation had theretofore been known, and the name, whether it be the same or a different one, by which it is

intended it should be known thereafter ; the business to be carried on ; the place where such business is to be carried on, and where the principal office is to be kept ; the time when the corporation is to expire subject to the limitation contained in the eleventh section of this chapter [§ 8011] ; the amount of the whole capital ; the amount of the capital paid in ; the amount to which it is intended to reserve the privilege of increasing the same, and the par value of each share ; which copy and statement shall be certified by the president, under his hand and the common seal of the corporation : " W. Va. 54,12.

A corporation, at the time when it accepts the provisions of this chapter [§ 8002], may change the par value of its shares as the stockholders thereof, in general meeting, or the board of directors under authority given them by the stockholders, may determine ; in which case, the statement to be filed as aforesaid with the secretary of state, shall show the proposed change, and the same shall have effect from the date of the certificate of incorporation : W. Va. 54,13. See also Art. 809.

"When a certificate of incorporation is issued pursuant to the twelfth section [above], the board of directors and officers then in office may continue to act in their respective capacities until the next annual meeting of the stockholders, and thereafter until their successors have been chosen and qualified, or until a general meeting, called pursuant to the forty-first section of chapter fifty-three of the code [§ 8050], shall elect a new board or make such order in the matter as they deem right : " W. Va. 54,14.

"Any corporation heretofore organized and now in existence under any general or special law of the Republic or state of Texas may, by a vote of its board of directors, accept any or all the provisions of this title, and have and exercise all the rights, power, and privileges conferred by this title, by filing a copy of their acceptance with the secretary of state ; whereupon, that portion of its charter inconsistent with this title, or the portion accepted, shall cease to be applicable to such corporation ; and it shall have the exclusive right to carry out the objects of said corporation, as described in its act of incorporation, or certificate, filed with the secretary of state, if acting under a general law within the limits or boundaries described in said act of incorporation, or certificate, as the case may be, without any limitation as to time, and shall possess all the privileges and franchises conferred by its act of incorporation or certificate filed with the secretary of state, not abandoned in the copy of acceptance of any or all the provisions of this title : " Tex. 588.

"All articles of association filed in the state department in accordance with the provisions of an Act entitled 'An Act concerning private corporations,' purporting to have been passed Dec. 2, 1871, are hereby validated as fully as if filed under the provisions of this title : " Tex. 602.

"Any corporation (existing on the first day of January, 1873 : Cal.) (or existing at the passage of this act : Dak., Ida.) formed under the laws of this state (and still existing and which has not already elected to continue its existence : Cal.) under the provisions of this code applicable thereto, (may elect so to continue : Dak.) may, at any time hereafter, make such election (by the unanimous vote of all of its directors : Cal., Ida.) or such election may be made at any annual meeting of the stockholders or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary (when the election is made by their unanimous vote : Cal., Ida.), or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors (must be filed in the office of the clerk of the county where

the original articles of corporation are filed : Cal., Ida.), and a certified copy thereof must be filed in the office of the secretary of state ; and thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby : " Cal. 5287 ; Dak. Civ. C. 566 ; Ida. 2650.

" No corporation formed or existing before twelve o'clock, noon, of the day upon which this code takes effect, is affected by the provisions of this code, unless such corporation elects to continue its existence under it as provided above ; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section : " Cal. 5288 ; Ida. 2651 ; Ariz. 354.

" Corporations created before the adoption of the present constitution, and which have not, by election or some other act, come to be governed by laws since passed, shall be governed and controlled by the laws then in force, and the valid modifications thereof since or herein enacted ; and other corporations, now existing or hereafter created, shall be governed and controlled by the provisions of this title : " O. 3232.

" A corporation created before the adoption of the present constitution, and now actually doing business, may accept any of the provisions of this title, and when a certified copy of such acceptance is filed with the secretary of state, so much of its charter as is inconsistent with the provisions of this title is hereby repealed : " O. 3233 ; Neb. 16,54.

" Corporations created before the adoption of the present constitution, which take any action under or in pursuance of this title, shall thereby and thereafter be deemed to have consented, and shall be held, to be a corporation, and to have and exercise all and singular its franchises, under the present constitution, and the laws passed in pursuance thereof, and not otherwise : " O. 3234.

" The stockholders of any private incorporation heretofore incorporated by any special act of the legislature may at any time hereafter, while such corporation exists, incorporate themselves under this act, in the mode herein prescribed, for the purpose of carrying on the enterprise, business, pursuit, or occupation for which they may have been specially incorporated ; and the filing of the articles of incorporation shall be deemed a surrender of such special incorporation, but not of any vested right thereunder, and thereafter such corporation shall have the powers and privileges, and be subject to the liabilities and limitations, provided by this Act, and not otherwise : " Ore. 3234.

" Any company organized under the provisions of this chapter, and other companies who have become bodies corporate, heretofore formed under the provisions of any general law, or any special act, who may desire to come under and avail itself of the privileges and provisions herein granted, shall give notice to the secretary of the territory, of their surrender of their rights and privileges under any previous law or act, said notice to be certified to by the president of said company and to be filed in the office of the secretary of the territory, and become a body corporate and politic, by complying with all and singular the provisions of this chapter : " Mon. G. L. 486.

" Any company organized under and by virtue of any act of the territory of Dakota, or any association of individuals acting as bodies corporate, may surrender their certificates or articles of association to the secretary of the territory, and become a body corporate and politic under the provisions of this chapter, by complying with all and singular the provisions thereof : " Wy. 547.

" The provisions of this act shall not affect the corporate existence of any corporation heretofore formed under any general or special law ; but all such corporations shall be subject to all the provisions of this act that are made applicable thereto : " S. C. 1886,288,34.

"All laws or parts of laws of incorporation of companies, coming within the purview of this chapter, heretofore passed, conflicting with any of the provisions of this chapter are hereby declared inoperative and void, and all existing statutes or parts of statutes regulating the general powers, duties, and liabilities of corporations in this state are hereby repealed." Fla. 34,32.

"All corporations heretofore formed by virtue of any law of the territory of New Mexico, shall comply with and conform to the provisions of this act, so far as the same shall be applicable and shall not interfere with any vested right:" N. M. 213.

Private corporations heretofore formed in pursuance of law by voluntary association for any of the purposes specified in § 3276 [§ 8010], shall have the benefits and privileges conferred by this chapter, and be subject to the liabilities imposed thereby: Vt. 3297.

"Any corporation now existing in (the state) this territory and formed under the laws thereof may, by a resolution of its board of directors, elect to come under and enjoy all the advantages of this title, and upon filing in the office of the secretary of the territory a copy of said resolution certified by the seal of said corporation and attested by the president thereof with the seal of said corporation, such corporation shall have the same powers, privileges, and rights as though it had been erected under this act:" Neb. 1,16,54; Ariz. 353.

**Provided**, That nothing herein contained shall be held or construed to extend or continue to any corporation organized or existing under any special charter or any general or special law of the territory of Kansas, any special franchise, privilege, immunity, or exemption not possessed by corporations organized under the general law; but by accepting or availing itself of the provisions of this act, any such corporation shall be deemed and held to waive and surrender any and all such special franchises, privileges, immunities, and exemptions: Kan. 23,25; Mo. 2509.

"Where the legislature has the right to alter or repeal the charter or certificate of incorporation heretofore granted to any joint stock company, or to alter or repeal any law relating to such company, nothing contained in this chapter shall be construed to surrender or impair such right:" W. Va. 53,8.

Provided, that nothing in this section contained shall be construed to authorize the renewal, continuance, or extension of the charter of any company engaged in the manufacture or sale of illuminating gas: Mo. 2509.

But nothing herein contained shall extend or continue to any corporation organized or existing under a special law or charter any special privilege, immunity, franchises, or exemptions not possessed by corporations organized under the general laws of this state; and any corporation organized or existing under special law or charter shall, by accepting or availing itself of the provisions of this section, be deemed and held to thereby waive and surrender any and all such special privileges, immunities, franchises, and exemptions, and it shall be subject to all the duties and obligations of corporations under the general laws of this state: Provided further, that the duration of such corporation shall not be continued as aforesaid, until such corporation shall pay into the state treasury fifty dollars for the first fifty thousand or less of the capital stock of the corporation, and a further sum of five dollars for every additional ten thousand dollars of its capital stock, as provided by law: Mo. 2509.

All corporations organized under general law in whose certificates or articles of incorporation there is an omission of any matter required to be therein stated, or which are defectively executed or acknowledged, or in which any other informality exists, are hereby declared to be and to have been corporations from the time of filing such certificate in the same manner and to the same effect and intent as if such certificate or articles are hereby validated and declared to be legal, and have the same force and effect as if they were free from all fault or defect: South Dakota 1890,57,1.

That no corporation organized under the laws of Wyoming Territory or any other jurisdiction than the state of Wyoming, shall be permitted to transact business in this state until it shall have accepted the constitution of this state: Wy. 1890-91, 42,1. Compare, for other states, Vol. I. § 441.

§ 8003. **Repeal of Charters, etc.** Compare Vol. I., §§ 441-443. (A) It is now provided in many states that *any* act of incorporation is at any time subject to repeal or amendment<sup>d</sup> by the legislature: N. H. 148,18; Vt. 3257;<sup>c</sup> R. I. 152,17;<sup>a</sup> Ct. 1909;<sup>a</sup> N. J. Corps. 6; Pa. Corps. 82;<sup>a,d</sup> Mich.<sup>a</sup> 4879; Wis. 1768; Va. 1069;<sup>a,b</sup> W. Va. 53,8; Tenn. 1711; Dak. Civ. C. 375; S. C. 1886, 288,21; Oka. 946.

B This would seem to apply to the general act also, and charters or articles of association (see § 8020) thereunder; and in some states it so expressed; *i.e.*, powers or charters under this title are subject to amendment or repeal: Mass. 105,2; Vt. 3298; N. J.; Pa. Corps. 10; Wis.; Del. V. 17,147, 14 & 44 & 21; Va. 1146; W. Va.; N. C. 677; 1889,170; Tenn. 1699; Tex. 574; Cal. 5384; Dak. Civ. C. 375,449; Ida. 2641; Uta. 2287; S. C.

So, the provisions of the general act [this Title] itself: N. J. Corps. 35; Ill. 32, 9; Del. V. 17,147,21; Cal. 5384; Col. 365; Dak. Civ. C. 449; Ida. 2641; Mon. G. L. 466; Wy. 518; Uta.; Oka. 1026.

Such power to amend or repeal includes the power to "suspend": N. J., Dak., Oka.

"The legislature may at pleasure 'dissolve' any company created by virtue of this act:" N. J. Corps. 13; Wis. 1768; Ark. 991; Cal.; Ida. So, "vacate or annul; Vt. So, it may annul or dissolve: N. C. 1981. And prescribe such mode as may be necessary for the settlement of its affairs:" Wis., Ark.

But such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred: N. H., N. J., Del., Cal., Ida., Mon., Wyo., N. C.

"But when a charter contains an express provision for limiting its duration, it may not be repealed except for violation of the charter or other default of the company:" Mich.

The legislature may at any time limit or restrict the powers of any corporation organized under any law: Wis. 1768.

So, they may "modify or annul . . . whenever the public good shall require:" N. H. "For just cause:" Wis.

The legislature shall always have power to prescribe such regulations and provisions as it may deem advisable upon all corporations formed under the general act: Ill. 32,9; Col. 365.

So, the articles, by-laws, and regulations of corporations established under the general act are at all times subject to legislative control, and may be altered, abridged, set aside, or the franchise be regulated or subjected to conditions: Io. 1090.

Every corporation formed under the provisions of this article shall be subject to any and all provisions and regulations which may hereafter, by any change in or amendments of the laws of this state, be made applicable to such corporation: Md. 23,85.

Thus, in detail: Every act of incorporation passed after the eleventh (seventeenth, Me.) day of March in the year eighteen hundred and thirty-one shall be subject to amendment, alteration, or repeal at the pleasure of the legislature (but the corporation, notwithstanding such repeal, shall, in Massachusetts, be subject to the provisions of [§§ 8355-6] §§ 41 and 42, and such amendment, alteration, or repeal shall not, in Massachusetts, take away or impair any other remedy which may exist by law consistently

with those sections against the corporation, its members, or officers, for a liability previously incurred : Mass. 105,3 ; Me. 46,23.

Nor deprive the courts, in Maine, of any power which they have at common law over it or its officers. *Unless* such Act contains an express limitation to the contrary : Me., R. I.

So, "all acts creating or authorizing the organization of corporations, or altering the charters of corporations previously existing, which have been or shall be passed by the general assembly, and the charters of all corporations heretofore granted, and under which no corporations have been organized, shall be subject to alteration, amendment, and repeal at the pleasure of the general assembly, unless otherwise expressly provided in such acts : " Ct. 1909.

"Private corporations heretofore created without the reservation of the right of dissolution, and where individual rights have become vested, are not subject to dissolution at the will of the state : " Ga. 1683.

"In all cases of private charters hereafter granted, the state reserves the right to withdraw the franchise unless such right is expressly negatived in the charter : " Ga. 1682.

"Public corporations, being established for public purposes, are always subject to dissolution by the act of the general assembly : " Ga. 1681.

"It shall be deemed a part of the charter of every corporation created under the provisions of any general law, and of every charter granted, renewed, or amended by act or joint resolution of the general assembly (unless such act or joint resolution shall, in express terms, declare the contrary), that such charter, and every amendment and renewal thereof, shall always remain subject to amendment, alteration, or repeal by the general assembly : " S. C. 1886,288,21.

"The powers conferred in this section shall extend to the amendment of all charters contemplated in said section, whether the original charter sought to be amended was originally granted by the general assembly of the state, or by a Superior Court of this state : " Ga. 1675,6.

"But in no case shall such alteration or repeal affect the right of the creditors of the company to have its assets applied to the discharge of its liabilities, or of its stockholders to have the surplus, if any, which may remain after discharging its liabilities, and the expenses of winding up its affairs distributed among themselves in proportion to their respective interests : " W. Va. 53,8. See also Art. 835.

NOTES. — <sup>a</sup> Unless a special provision to the contrary be made in the charter. <sup>b</sup> But in the noted states, it is only so subject *after fifteen years from its passage*. <sup>c</sup> Any act "hereafter passed : " Vt., N. Y. <sup>d</sup> "In such manner that no injustice be done to the corporators : " Pa.

**§ 8004. Special Charters and General Laws.** No corporation shall hereafter be created by special chapter : Md. 1890,195 ; <sup>a</sup> W. Va. 53,3 ; N. C. 677,1885,19 ; So. Dak. Const. 17,1. Except municipal : Md.<sup>a</sup> For charitable purposes : S. Dak. So, educational : S. Dak. ; penal : S. Dak. ; reformatory : S. Dak., which are to be and remain under the control of the state ; and cases where no general laws exist : Md.<sup>a</sup>, N. C.

So in other states ; see below ; and see also constitutional provisions in Vol. I., Art. 44.

All private corporations organized under special act are subject to the provisions of §§ 3279, 3283, 3284, 3287, 3291, 3292, 3293 ; provided nothing herein shall prevent their contracting debts to an amount not exceeding three-fourths of their capital stock paid in, when specially allowed so to do by such act : Vt. 1886,79.

No general or special law shall be passed, conferring a benefit upon any corporation, unless such corporation shall have previously filed in the office of the auditor-general the acceptance of the provisions of the constitution : Pa. Corps. 70.

And no act shall be passed granting special privileges to any joint stock company heretofore or hereafter incorporated under the provisions of chapter fifty-four of this code, or any other general law of this state : W. Va. 53.3.

A corporation can only be created by authority of a statute. But the statute may be special for a particular corporation, or general for a number of corporations : Dak. Civ. C. 374 ; Oka. 945.

In order to constitute a private corporation there must not only be a statutory grant of corporate authority, but an acceptance of that grant by a majority of the corporators or their agents. The acceptance cannot be conditional or qualified : Dak. Civ. C. 382 ; Oka. 953.

Except when otherwise expressly provided, the acceptance of a grant of corporate authority may be proved like any other fact : Dak. Civ. C. 383 ; Oka. 954.

So, the legislative assembly cannot grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate : Dak. Civ. C. 384.

The power to create corporations in this state vests in the general assembly and the courts, by whom all charters must be granted : Ga. 1674.

The legislature shall provide by general law (1) for incorporating such municipal, educational, agricultural, mechanical, mining, and other useful companies or associations as may be deemed necessary : Fla. 34,1.

(2) For the organization of all corporations hereafter to be created : So. Dak. Const. 17,1.

And all existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place and business been commenced in good faith at the time the constitution took effect, have thereafter no validity : S. Dak. Const. 17,2.

See, for other states, Vol. I. § 444.

The legislative assembly shall have power to create by general law, modify, repeal, or amend, within the district, corporations aggregate for religious, charitable, educational, industrial, or commercial purposes, and to define their powers and liabilities ; but the powers of corporations so created shall be limited to the district : D. C. 65.

**The Incorporators.** Private corporations may be formed (1) by the voluntary association of any five or more persons (see § 8021) in the manner prescribed in this article. A majority (except in Oka.) of such persons must be residents of this state : Cal. 5285 ; O. 3236 ; Ida. 2576 ; Dak. Civ. C. 384 ; Oka. 955.

So, (2) in the manner and for the purposes hereinafter provided : Tenn. 1691 ; Ida. 2576.

And only in this way : Dak.

A single individual may entitle himself to all the advantages of this chapter, provided he complies substantially with all its requirements, omitting those which from the nature of the case are inapplicable : Io. 1688.

NOTE. — " Proposed as a constitutional amendment ; to be voted on in 1891.

**§ 8005. Process for Special Charters.** Every bill introduced in either house of the general assembly, to incorporate any company, or for the benefit thereof, or to amend any act relating to such company or corporation, shall be accompanied by a receipt from the state treasurer for one hundred dollars. This section shall not be construed to apply to benevolent, charitable, literary, or religious associations, nor to railroad companies, nor companies to build turnpike roads, nor bridges over non-navigable streams : N. C. 696.

Any bill to create a corporation must be continued until another election for the legislature shall have taken place, and notice thereof with the place and purpose of the



corporation be given for three weeks preceding the first of April next, by publication in a newspaper in such place or county : R. I. 19,2.

When any person or persons shall be disposed to make application to the legislature of this state for an act of incorporation, for any purpose whatever, or any company or association, already incorporated, shall be disposed to make application for a renewal of their charter, or any alteration in the law so incorporating them, or when any application shall hereafter be made for the purpose of obtaining a law authorizing the erection of a bridge over any navigable water in this state, it shall be the duty of such person or persons so applying, or the directors or stockholders of such incorporation, or some of them, to signify his or their intention, by advertisement, to be inserted for at least six weeks, successively, in one or more of the newspapers published in the county where the objects of such association or corporation are carried or intended to be carried into effect ; and if no newspaper be published in such county, then in the newspaper or newspapers published nearest to the same ; and specify the objects of such incorporation or application, the amount of capital stock requisite to carry their objects into effect ; and in case of an application for any alteration in any charter already granted, it shall be the duty of the stockholders or directors of such incorporation to state in such notice, specifically, the alteration so to be applied for ; and that due proof shall be made of such notice having been published previous to leave being given to bring in any bill to comply with such application : N. J. Corps. 97.

§ 8006. **Construction of Title.** This act shall not be held to revive or extend any private charter or law heretofore granted or passed concerning any corporation ; Ill. 32, 9 ; Col. 365.

§ 8007. **Definitions.** A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes : Cal. 5283 ; Dak. Civ. C. 373 ; Oka. 944.

"The term *corporation*, as used in this chapter, includes all joint stock companies and associations having any powers or privileges not possessed by individuals or partnerships." Vt. 3257 ; Mo. 2480.

A corporation is an artificial person created by law for specific purposes, the limit of whose existence, powers, and liabilities is fixed by the act of incorporation, usually called its charter : Ga. 1670.

Corporations are defined to be (1) public (*political* : La.), (2) private : Kan. 23,1 ; Tex. 562 ; Cal. 5284 ; Dak. Civ. C. 378 ; Ida. 2575 ; Ga. 1671 ; Ariz. 229 ; La. 429 ; Oka. 949.

A public ("*municipal*:" N. Y.) corporation is one that has for its object the government of a portion of the state : N. Y. 1890,563,2 ; Kan. 23,2 ; Tex. 563 ; Cal. ; Dak. Civ. C. 379 ; Ida. ; Ga. 1672 ; Ariz. 230 ; La. ; Oka. 950.

All others are private : Cal. ; Dak. Civ. C. 380 ; Ida. ; Ga. 1673 ; La.

Private corporations are (1) corporations for religion ; (2) for charity or benevolence ; (3) for profit : Kan. 23,3 ; Tex. 564 ; Dak. ; Ariz. 231 ; Oka. 951 ; (4) for education, art, and literature : Dak., (5) sociability : Ariz. ; (6) education : Ariz., Dak., Oka.

"Public convenience or individual profit, civil, religious, or educational : " Ga.

"The term 'private corporation,' as used in this chapter, shall mean any corporation created for the purpose of making a turnpike road, railroad, or canal, for carrying on any branch of manufacture, for mining, for improving navigation of a stream or other waters, for building wharves or storehouses, for building or using steamboats or other vessels, for the purposes of banking or insurance, and other corporations which, from their object, suppose a division of profits among the stockholders : " Vt. 3251.

A domestic corporation is one incorporated under the laws of the state ; all others are foreign : N. Y. 1890,563,2.

A stock corporation is one having capital stock divided into shares : N. Y.

"The words 'joint stock company' include every corporation having a joint stock or capital divided into shares owned by the stockholders respectively : " W. Va. 53,1.

"Corporations created by the general assembly whose charters contemplate the receiving or holding money on deposit, or the letting, loaning, or managing money deposited, other than banks of discount, shall be deemed to be moneyed corporations within the meaning of this chapter : " Vt. 3255.

"The term 'moneyed corporation,' as used in this title, shall be construed to mean every corporation having banking powers, or having the power to make loans upon pledges or deposits, or authorized by law to make insurances : " N. Y. 1890,563,2.

The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members : Cal. 5298 ; Dak. Civ. C. 392 ; Ida. 2586 ; Del. V. 17,117,45 ; Oka. 964.

"When the word 'by-law' is used in this chapter, it is to be understood as if immediately followed by the words 'adopted by the stockholders in general meeting assembled : ' " W. Va. § 53,2.

"The term 'clerk of a corporation,' as used in this chapter, shall mean the recording officer, whether he is styled clerk, secretary, cashier, or however designated ; and the term 'treasurer,' as used in this chapter, shall mean the officer who has the care and custody of the funds of such corporation, by whatever name he is designated : " Vt. 3256.

A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals which compose it, and which, for certain purposes, is considered as a natural person : La. 427.

The use of corporations is to contribute by the union and assistance of several persons, to the promotion of some object of general utility, although they be at the same time established for the advantage of those who are members of such corporations : La. 428.

Corporations are also divided into civil and religious, and this distinction results, as well from the quality of the persons who generally compose these kinds of corporations, as from the difference of the object of their establishment : La. 430.

Civil corporations are those which relate to temporal police ; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion ; such are the congregations of the different religious persuasions : La. 431.

§ 8003. **Louisiana Law : Of the Rights and Privileges of Corporations, and of their Incapacities.** Corporations must not only be authorized by the legislature, or established according to law, but a name must be given to them ; and it is in that name they must sue or be sued, and do all their legal acts, although a slight alteration in this name be not important.

Corporations legally established are substituted for persons, and their union which renders common to all those who compose them, their interests, their rights, and their privileges, is the reason why they are considered as one single whole. Hence it follows that they may possess an estate, and have a common treasury for the purpose of depositing their money ; that they are capable of receiving legacies and donations ; that they may make valid contracts, obligate others and obligate themselves towards others ; exercise the rights which belong to them ; manage their own affairs ; appear in courts of justice, and even enact statutes and regulations for their own government, provided such statutes and regulations be not contrary to the laws of the political society of which they are members.

The right of succession also is inherent to the nature of corporations ; so that as long as they exist they transmit to their successors, their rights and their property.

The right of electing in the manner prescribed by law, new members in the stead of those who have ceased to be members of the corporation, is the right impliedly attached to the constitution of every regularly established corporation.

Corporations are intellectual beings, different and distinct from all the persons who compose them.

The estate and rights of a corporation belong so completely to the body, that none of the individuals who compose it can dispose of any part of them.

In this respect the thing belonging to a body is very different from a thing which is common to several individuals, as respects the share which every one has in the partnership which exists between them.

According to the above rule, what is due to a corporation is not a due to any of the individuals who compose it, and *vice versa*.

A creditor of a corporation cannot therefore compel any of the members thereof to pay what may be due to him by the corporation ; he can demand his payment of the corporation only, through their president, syndic, or attorney in fact, and he can seize no other effects but such as belong to the corporation, provided the debt has been contracted by the corporation through their president, syndic, or attorney in fact ; for if all the individuals who compose the corporation have signed the deed personally, every one of them may be compelled to make payment, either for his individual portion or *in solido*, when it has been stipulated expressly that the debt was contracted *in solido*.

From the circumstance that a corporation is an intellectual being, it follows that they cannot personally transact all that they have a right legally to do, as has been above observed ; wherefore it becomes necessary for every corporation to appoint some of their members to whom they may intrust the direction and care of their affairs, under the name of mayor, president, syndics, directors, or others, according to the statutes and qualities of such corporation.

The attorneys in fact or officers thus appointed by corporations for the direction and care of their affairs, have their respective duties pointed out by their nomination, and exercise them according to the general regulations and particular statutes of the corporation of which they are the heads.

These attorneys or officers, by contracting, bind the corporations to which they belong in such things as do not exceed the limits of the administration which is intrusted to them ; their act is supposed to be the act of the corporation.

If the powers of such attorneys or officers have not been expressly determined, they are regulated in the same manner as those of other agents.

Corporations being intellectual persons, they are subject to various kinds of incapacities, some of which are inherent to their nature, others are established by law.

A corporation cannot be administrator, guardian, or testamentary executor, nor fulfil any other office of personal trust. A corporation cannot be imprisoned, for, its existence being ideal, nobody can arrest or confine it.

In the same manner a corporation cannot bring an action for assault and battery or for other injuries of that nature ; for a corporation can neither beat nor be beaten in its corporated capacity.

A corporation cannot commit the crime of treason, or any other crime or offence, in its corporate capacity, although its members may be guilty of those crimes in their individual and respective capacities.

In corporations the act of the majority is considered as the act of the whole.

The statutes and regulations which corporations enact for their police and discipline, are obligatory upon all their respective members, who are bound to obey them, provided such statutes contain nothing contrary to the laws, to public liberty, or to the interest of others.

Corporations unauthorized by law or by an act of the legislature, enjoy no public character, and can not appear in a court of justice, but in the individual name of all the members who compose it, and not as a political body ; although these corporations may acquire and possess estates, and have common interests as well as other private societies : La. 432-446.

### **Art. 801. General Restrictions.**

§ 8010. **Purposes.** (See also, for many states, under Title III., Manufacturing Corporations, and compare § 8499.) Corporations may be formed under this chapter for the following purposes : —

(A) In most states for any lawful purpose : Ct. 1944 ; N. Y. 1875,611,1 ; N. J. Supp. Corps. 48,1888,80 ; Ill. 32,1 ; Wis. 1771 ; Io. 1058 ; Minn. 2638 ; Neb. 1,16,123 ; N. C. 677,1 ; Ky. 56,1 ; Ark. 960 ; Tex. 566 ; Ore. 3217 ; Col. 237 ; Uta. 2267 ; S. C. 1886,288,1 ; Ga. 1676 ; Fla. 34,2 ; Miss. 1027 ; 1882,26 ; Ariz. 232.

“ For any purpose for which individuals may lawfully associate themselves : ” Cal. 5286 ; O. 3235 ; Va. 1145 ; W. Va. 54,2 ; Ida. 2577.

Within or without the state : Ct. See below.

For the purpose of engaging in any other species of trade, business (or commerce, foreign or domestic, Nev.) : Nev. 802 ; Wash. 2421 ; 1886, p. 84.

“ For such other purposes as Congress may hereafter authorize : ” Dak. Civ. C. 384 ; (see R. S. U. S. 1889).

Of carrying on any other branch of business designed to aid in the industrial or productive interests of the country and the development thereof : Mon. G. L. 446 ; Wy. 501.

**Except** (1) banking : Ct. ; N. Y. 1,18,3,4 ; N. J. ; Ill. ; Wis. ; Va. ; Ky. ; N. C. ; Ga. ; La. D. 683.

(2) Insurance : Ct., N. Y., N. J., Ill., Wis., N. C., Ky., Ga.

(3) Real estate brokerage : Ill.

So, “ dealing in real estate ” : Ct. ; O. ; W. Va. ; Uta. 2272.

(4) The operation of railroads : N. Y., N. J., Ill., Wis., Va., N. C., Tex., Miss., S. C. ; or construction of them : N. Y., and see Title II.

(5) Trust business : Ct. Trust companies : N. Y.

The business of loaning money : N. Y., N. J., Ill.

(6) Plank or turnpike roads : N. J., Wis., Va. (if beyond the limits of the county).

(7) “ Carrying on professional business : ” O.

(8) Any other business which involves the right of taking land by eminent domain : N. J.

(9) And except such other purposes as may be otherwise provided for by laws : Wis., Tex.

(10) Trading in bonds, notes, or other evidences of indebtedness : Ct.

(11) Trafficking in letters-patent or patent rights : Ct.

(12) Savings banks : N. Y., N. J.

(13) Canals : Va.

(14) Churches or religious denominations : W. Va. 54,3.

(15) Mercantile or commission, brokerage, stock jobbing, or exchange business : La.

(16) Telegraph companies : Miss.

(17) Cities and towns : Miss.

(18) Express companies : Miss.

(19) Safe deposit companies : N. Y.

“ Provided, that nothing in this section shall be so construed as to authorize the formation of banking corporations for the purpose of issuing or circulating money or

currency within this state, except the federal currency and the notes of banks authorized under the laws of the Congress of the United States; nor shall bank notes or paper of any kind be permitted to circulate as money in this state, other than the federal currency and the notes of banks authorized by the laws of Congress of the United States: " Nev. 802. See also § 8218.

(B) And corporations may be formed under this chapter for the following specified purposes: (1) the establishment of ferries: " Pa.<sup>f</sup> Corps. 4; Io.; Kan. 23, 5; Tex. 566; La.<sup>e</sup> D. 683.

(2) For the purchase and sale of real estate for burial purposes [cemetery companies]: " Pa.<sup>f</sup> ib. 3; Ill.; Kan.; Md.; Tex.; W. Va.: D. C. 594. Abstract (of title) companies: Tenn. 1724.

(3) Land companies, generally: " N. J.; Pa.; Minn. 2638; Md. 23,16; Tex. Town lot companies: Kan.; Tex.; N. M. 226; Mon. Building and loan companies: Pa.; Wis.; Kan.; Del. V. 17,147,10; Tex.; W. Va.; Md.<sup>e</sup> 23,18; Tenn. 1889,267. The reclamation and improvement of submerged lands: N. J., La., Pa., Del. For "farming purposes": Nev. 802. Drainage and sewerage: La. "The colonization and improvement of lands in connection therewith:" Dak.; N. M. 192; Uta. Irrigating ditches: Dak.; Uta.; N. M. 1889,101; Oka. "Development of agricultural resources of the state:" La.

For buying, selling, mortgaging, leasing, improving, disposing of, or otherwise dealing in lands in this state, or partly in this state, and partly beyond this state, and for the procuring and preparing for market, transportation, and selling of lumber, timber, wood, trees, plants, seeds, fruits, roots, or other products of land: Md. 23,16.

For raising and dealing in poultry and eggs: Tenn. 1889,122.

The accumulation and loan of funds, the erection of buildings, and the purchase and sale of real estate for the benefit of its members: Minn., Kan., Tex.

To raise necessary funds by any settlers on any Indian lands in this state, to defray expenses in endeavoring to obtain title to any such lands so occupied by such settlers: Kan.

Purchasing, holding, laying out, platting, developing, leasing, selling, dealing in, conveying, or otherwise using or disposing of town sites, or towns, or the lots, blocks, or subdivisions thereof, or lots, blocks, or subdivisions in any town, village, or city: Kan.; Mon. G. L. 446; Tenn. 1887,36.

"The promotion of immigration:" Kan.; Tex.; S. C.; La.; Md. 23,34. Guarantying and insuring real estate titles: Wis.

(4) Agricultural companies: " N. J.; Pa.,<sup>f</sup> Wis.; Minn.; Kan.; Md.<sup>e</sup> 23,15; W. Va.; Tenn. 1889,242; Tex.; D. C. 553. "Horticultural:" N. J., Kan., Md.,<sup>e</sup> Tex., Tenn. Including companies for fairs, breeding stock, etc.: Vt. 32,76; N. J.; Md.;<sup>e</sup> Kan.; Tex.; Tenn. *ib.* and 1887,199. Dairy associations: Md.<sup>e</sup> "Marketing:" D. C. Fruit or vegetable packing, etc.: Md.;<sup>e</sup> Del. V. 14,152; Tex. Or preserving animal or vegetable food: Del. V. 17,147,10; Tenn. 1887,241. Companies for receiving, keeping, and selling cattle, sheep, and hogs: Md.<sup>e</sup> 23,17. "Droveyards:" Pa. For purchasing, breeding, and selling live stock: Tenn. 1887,163. The yards of such companies must be within six miles of Baltimore: Md.

(5) For the construction, leasing, or operating of canals: " Minn. 2248; Iowa: Neb. 1,16,123; Wash.; La.<sup>e</sup> "Ditching:" Nev. 802. Of harbors and canals on the gulf of Mexico: Tex.

(6) Of railways: " Minn. 2448; Io.: Kan.; Neb.; W. Va.; Ky.; Wash.; Dak.; Wy.; La.;<sup>e</sup> N. M. 192; Oka. 955. "Wagon roads:" Dak. 384; 1887,35; Wy.; Uta.; N. M.; Kan.; Tex.; Oka. Plank roads: Md. 23,31; La.<sup>e</sup> Horse or street railways: Ill., Kan., Tex. "Dummy railroads:" Ill. Not over twelve miles long, "passenger railways:" Md. "Any kind of a road other than a railway, and bridges

in connection therewith : " Pa., Kan., Tex. Stage and omnibus lines : Pa. Mountain inclined-plane railways : Tenn. 1887,16. See Title II.

So, (7) Transportation companies : <sup>a, b</sup> Wis., Minn., Kan., Tex., N. J., Nev., D. C.

Inland navigation : N. J. ; Md.<sup>d</sup> 23,26. "Slack-water navigation : " Minn. Navigation, generally : Pa., Nev. "Shipping : " Wis. Stage companies : Md. 23,32 ; Kan. ; Tex. ; Pa. "Forwarding : " Wis. ; Md.<sup>d</sup> 23,27. Ocean navigation : Md.<sup>d</sup> 23,25. Inclined-planes : Pa. Cable motor companies. For sea navigation by steam : La., Pa. "Steamboat companies : " Kan., Tex. Pipe lines for oils, etc. : W. Va.

(8) To construct and maintain docks, steamships, and other vehicles for the transportation of freight and passengers : <sup>a</sup> La. ; Md.<sup>d</sup> 23,27.

So, for the construction, leasing, or operating of bridges : Pa. ; Tenn. 1885,124 ; Io. ; Kan. ; Neb. ; W. Va. 1890, Ex. 1 ; Tex. ; La. ; <sup>c</sup> Md.<sup>d</sup> 23,28 ; of railway bridges : Ill. ; of houses or buildings of any kind : N. J., Wis., Nev., Wash., Vt., Tex. ; warehouses : Vt. ; Wis. ; Minn. ; Md.<sup>d</sup> 23,27 ; of vessels : N. J., Pa. ; of wharves and docks : Vt. ; N. J. ; Pa. ; Wash. ; Minn. ; Wis. ; Md.<sup>d</sup> 23,27, and 28 ; La. ; of hotels : Vt. ; Wis. ; Pa. ; Minn. ; Md.<sup>c</sup> 23, 15 ; W. Va. ; Kan. ; Tex. ; Nev. ; of public halls : Vt., Minn., Pa.<sup>f</sup> opera houses : Pa. ; of elevators [grain] : Pa., Wis., Minn. ; of public baths : Md. ; <sup>e</sup> of markets : Kan., Tex. ; of union stock yards : Kan. ; of factories : Vt.

To construct and maintain dry docks or floating docks for the building or repairing of ships and other vessels : La. D. 683 ; Md.<sup>d</sup> 23,28. ; the renting of buildings and steam or other power therewith : N. J. ; "commission or storage : " Wis. ; bridges, piers, marine railways : Md.<sup>d</sup> 23,28.

(9) Gas Companies : <sup>a</sup> Pa. ; Minn. ; Kan. ; Tex. ; Md. 23,30 ; W. Va. ; La. ; Tenn. 1889,240. Other light companies : Pa., Kan., Tex. Heat companies : Pa., Kan., Tex. Electric light, heat, and power companies : Vt. 1888,122 ; Md. 23,24, and 30.

(10) Water companies : <sup>a</sup> Pa. ; N. J. ; Kan. ; Tex. ; Md. 23,33 ; W. Va. ; La. ; Tenn. 1885,115 ; Wash. 2447. For improvement of rivers and streams and driving timber : Wis., Pa.

For manufacturing, furnishing, and selling hot water or steam for motive power, heating, cooking, or other useful applications in the streets and public and private buildings of any city, village, or town in this state : Md. 23,19. "Hydrostatic power : " Mass. 1891,189.

For boring for, opening, using, or refining petroleum, salt, or other mineral springs in this state, and for boring for, opening, using, or refining in this state, other oils, where the principal office of said corporation is located in this state : Md. 23,23.

So "spring companies" [in the sense of watering-places] : W. Va., Vt.

The construction of dams and canals for water-works, irrigation, or manufacturing companies : Pa., Kan., Tex., N. J., Wash. ("water-flumes"), Dak. Ditches, flumes, and tunnels : Mon., Wy. "Irrigating ditches : " Uta., N. M.

The construction of sewers : Kan., Tex.

Purchasing, holding, developing, improving, using, leasing, selling, conveying, or otherwise disposing of water powers and the sites thereof, and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same : Mon. G. L. 446.

Ice supply companies : Pa.

(11) Telegraph companies : <sup>b</sup> Pa. ; <sup>f</sup> Wis. ; Minn. 2448 ; Kan. ; Tex. ; Md.<sup>d</sup> 23,24 ; W. Va.. See Art. 895.

So, telephones : Kan. 23,5 c. ; Md. ; <sup>d</sup> W. Va. ; Tex. ; D.C. (U.S. 1881,29).

(12) For any works of internal improvement : <sup>a</sup> Io., Minn., Neb., W. Va., Fla., La.<sup>e</sup>

"All works of public utility and advantage : " La.

Telegraphs, pneumatic tube lines, subway conduits for the passage, operation, and repair of electric and other lines or pipes, canals, or slackwater navigation, upon any river, bay, or lake, and all works of internal improvement which require the taking of private property or any easement therein : Minn. 2448.

(13) For mining, smelting, quarrying, or manufacturing iron, copper, or other metals and minerals :<sup>a</sup> Pa. ; Minn. 2638 ; Kan. 23,5 ; Wis. ; Md.<sup>c d</sup> 23,21-22.

For mining purposes of any kind : Vt. ; N.J. ; Pa. ; Wis. ; Kan. 23,5 ; Md.<sup>d</sup> 23,20 ; W.Va. ; Tex. ; Ark. ; Nev. ; Wash. ; Dak. ; Mon. ; Wy. ; Uta. ; S.C. ; La. ; N.M. ; D.C. 553 ; Oka. See also Title III.

For "quarrying : " Vt., Pa.

The cutting and digging peat, stone, marl, clay, or like substances : N. J. ; and dealing in the same : N. J.

"Ore reduction : " Nev. "Producing the precious metals," Minn.

(14) Manufacturing companies, generally :<sup>b</sup> Vt. 3276 ; N.J. ; Wis. ; Pa. ; Minn. ; Kan. ; Tex. ; Ark. ; N.J. ; Md. 23,19 ; Del. V. 17,147,10 ; W.Va. 54,2 ; Ark. ; Nev. ; Wash. ; Dak. ; Mon. ; Wy. ; Uta. ; S.C. ; Miss. ; La. ; N.M. ; D.C. ; Oka. See also Title III.

The making, purchasing, and selling manufactured articles : N.J. ; Md. 23,35.

And the acquiring and disposing of the rights to use the same : N.J., Md.

For any mechanical business : Vt., Wis., Minn., Kan., N. J., Md., Ark., Nev., Wash., Mon., Wy., Pa., D.C.

Any "industrial " business : S.C., N.M., Md., Dak., Uta., Oka.

For chemical business : Wis., Minn., Kan., N.J., Md., Nev., Mon., Wy., La.

For "milling" : Nev., Wash. For any "labor" : S.C.

For shipbuilding : Md. "Other industrial pursuits : " Uta., S.C.

For "producing " Wis.

Manufacture and brewing of malt liquors (but not spirits) . Pa.

Mechanic arts, expositions, etc. : Tenn. 1889,242.

Printing or publishing companies : Vt., Kan., Tex., Pa.

For encouraging or aiding inventors or patentees : Wis., Pa.

For the formation of trade unions, with such additions to their name as they may adopt and set forth in their certificate, to promote the well-being of their every-day-life and for mutual assistance in securing the most favorable conditions for the labor of their members, and as beneficial societies : Md. 23,37.

For the acquiring, developing, improving, using, working, or otherwise utilizing or disposing of any novelty, invention, or process patented by the United States ; and for the sale, lease, or other disposition of articles manufactured under such patent : Md. 23,35.

To carry on manufactories of cotton, woolen, linen, silk and hempen cloths, and cordage : La. D. 683.

Iron, brass, and copper foundries : La. D. 683.

To manufacture iron, copper, lead, or other metals, earthenware or stoneware, engines, cotton gins, machinery, paper, gunpowder, agricultural implements ; to establish companies for refining sugar : La. D. 683.

Rolling stock and car companies : Kan. 23,5 b.

"Mercantile and agricultural implements and produce business, either separately or all combined : " Kan. 23,5 a.

The purchase and sale of agricultural and farm products : Tex.

But the capital must not exceed \$20,000 : Tex.

Cotton compresses : La.

Lumbering companies . Minn. ; Wis. ; Tenn. 1885,119 ; Wash. For private steam logging railways : Wis.

(15) Mercantile companies generally : Vt. 1884,105 ; Pa. ; Kan. ; Minn. ; Wis. ; Wash. ; D.C. ; Tenn. 1887,139. See also Title III.

For any kind of trading business : N.J., Pa., Wis., Miss.

“Merchandising :” Wy. “Commercial pursuit ;” Uta.

The conversion and disposal of agricultural products by means of mills, elevators, markets, stores, or otherwise : Kan.

The organization and maintenance of boards of trade and business exchanges : Wis., Kan., Pa.<sup>f</sup>

“For buying, selling, and dealing in any kind of real or personal property :” Wis.

The purchasing of copyrights for books, publications, and registered trademarks : Pa. 1889,234.

(16) Insurance companies, generally :<sup>b</sup> Md.<sup>d</sup> 23,17 ; W. Va. ; Dak. 1887,35 ; D.C. ; Oka. See also Title IV,

Fire :<sup>b</sup> Kan. ; Md.<sup>d</sup> 23,17 ; La.

Marine :<sup>b</sup> Kan., Md.,<sup>d</sup> La.

Life :<sup>b</sup> Pa., Kan., Md.,<sup>d</sup> La.

Accident, etc. : Kan., Md.<sup>d</sup>

Of domestic animals : Pa., Kan., Md.<sup>d</sup>

Guaranty companies : Md. 23,29.

So “dealing in annuities :” Kan.

Real estate title guaranty companies : Mass. 1884,180 ; Pa. ; Wis. ; N.M.

The prevention and punishment of theft or willful injuries to property, and insurance against it : Pa., Kan.

For the formation of accident insurance companies on the assessment plan : Md. 23,36.

(17) Banks, of issue and deposit :<sup>a</sup> W.Va., Nev., Wash. See Title V.

Of discount and deposit, *not* of issue : Dak., Oka.

Savings-banks : Md. 23,29 ; 1890,272 ; W.Va. ; D.C.

Trust companies : Kan., Dak., Uta., Oka.

Loan companies : Wis., Kan., Dak., Uta., Oka.

Guaranty associations : Dak., Uta.

Any corporation for banking purposes may be organized under the provisions of this act, subject, however, to all the provisions, restrictions, and limitations of an act entitled “An act to provide for and regulate the incorporation of banks in this State,” approved December 24th, A. D. 1885 : S.C. 1886,288,16.

(18) That for the purpose of co-operation in carrying on any manufacturing or co-operative trade, authorized by the tenth section of the act to which this is a supplement, seven or more persons may associate themselves with a capital of not less than one thousand nor more than fifty thousand dollars :<sup>a</sup> N.J. Supp. Corps. 61.

(19) Mutual benevolent societies :<sup>a</sup> Kan., Pa.<sup>f</sup>

For mutual support of members and their families in case of sickness, misfortune, poverty, or death : Wis.

Burial societies : Wis.

For the creation and maintenance of mechanics’ institutes, co-operative stores or societies : Md.<sup>e</sup> 23,15.

“Industrial societies :” W.Va.

The maintenance of clubs for social enjoyment :<sup>a</sup> Kan. ; Md. ; Pa. ;<sup>f</sup> Tenn. 1885, 132.

“Gymnastic societies :” W.Va., Wis.

“Fire engines and hose companies and uniformed volunteer companies :” Pa. ;<sup>f</sup> Md.<sup>e</sup> 23,14.



Militia companies: Pa.<sup>f</sup> W.Va.

For the formation of homestead or building associations, or associations for the loan of money on real or personal property (for the incorporation of associations of Odd Fellows, Free and Accepted Masons, Sons of Temperance, Good Templars, or other kindred associations; provided (in Maryland), that the property owned or acquired by such corporation is located in this state, and for forming, laying out, and maintaining cemeteries in this state; Md.; W.Va.): Md. 23,18.

So, corporations for "social" purposes: Pa.<sup>f</sup> Md.<sup>c</sup> 23,14.

Sports and athletics: Pa.<sup>f</sup> Wis.

Preservation of game, etc.: Pa.<sup>f</sup>

(20) Companies for the support of any public worship:<sup>a</sup> Pa.<sup>f</sup> Corps. 3; Kan.; Tex. "Churches:" Dak., N.M., Oka.

"Moral" associations: Md.<sup>c</sup> 23,14; W.Va. Missionaries: Pa.<sup>f</sup> Kan., Tex. "Religious:" Md.<sup>c</sup> 23,14; Del.; W.Va.

(21) For the support of any benevolent or charitable undertaking:<sup>a</sup> Wis., Pa.<sup>f</sup> Del., Md.<sup>c</sup> 1890,339; Kan.; Tex.; W.Va.; Dak.; Uta.; N.M.; Oka.

Hospitals or asylums: Md.;<sup>c</sup> W.Va.; Wis.; Tenn. 1889,123.

Educational corporations: Wis., Pa.<sup>f</sup> Md.<sup>c</sup> Kan., Tex., W.Va.

(22) Scientific associations:<sup>a</sup> Pa.<sup>f</sup> Dak., N.M., Wis., Md.<sup>c</sup> Kan., Uta., W.Va., Oka.

Universities, colleges, academies: Wis., Md.,<sup>c</sup> W.Va., Dak., Uta., N.M., Oka.

Medical societies: Md.<sup>c</sup> Pa.<sup>f</sup>

Observatories: Pa.

Industrial schools: Wis.

(23) The support of any literary undertaking:<sup>a</sup> Wis., Pa.<sup>f</sup> Md.<sup>c</sup> Del., Kan., Tex., W.Va.; or dramatic: Md.<sup>c</sup>

The maintenance of a library:<sup>a</sup> Wis., Pa.<sup>f</sup> Md.<sup>c</sup> Kan., Tex., W.Va., Dak., Uta., N.M., Oka.; or reading-room: Md.<sup>c</sup>

The promotion of painting, music, or the fine arts:<sup>a</sup> Wis.; Kan.; Md.;<sup>c</sup> Tex.; La. D. 739; Pa.<sup>f</sup>

The maintenance of public parks or pleasure grounds:<sup>a</sup> Kan., Tex., Vt., Pa.<sup>f</sup> Wis.

(24) For the purpose of carrying on out of this state, any lawful business not herein forbidden; provided, that in such case the secretary and treasurer and a majority of the directors shall always be residents of this state: Ct. 1944.

For any business out of the state which may be incidental to the business within it: Ct.

(25) Any company may be incorporated for any two or more of the purposes aforesaid, where, in the judgment of those forming said company, the same may be conducted by one corporation with advantage to its general interests: Md. 23,38.

So, for "one or more of the aforesaid branches of business:" Mon.; N.M. 1889,82.

(26) All persons who have organized themselves as a corporation under the provisions of this chapter for purposes other than those enumerated in § 2421, are hereby declared incorporate bodies, with all the powers the same as they would enjoy had they been incorporated for the purposes set forth in said § 2421; Wash. 2445.

It shall be lawful for any ten or more persons to associate themselves into a company to carry on any business which has for its object the selling of credit, or the limiting, insuring or guaranteeing, or the losses of wholesale dealers, manufacturers and jobbers, arising by reason of bad debts: N.J. 1889,22.

Said company, before it shall commence the transaction of any business, or the making of any contracts or other engagements, shall deposit with the comptroller of this state first bond-and-mortgage security, which shall be approved by the insurance commissioner of this state, to a not less amount than ten thousand dollars: N.J. 1889,22.

Any company organized as aforesaid, may carry on a part of its business out of this state, and have one or more offices and places of business out of this state, and may hold, purchase, and convey real and personal property out of this state the same as if such real and personal property were situate in the state; *provided*, that the certificate of the organization of such company shall state what portion of its business is to be carried on out of this state, and in what states or countries it is to be so carried on, and in what town its principal office; and shall also state the name of the town, or city, and county, in which the principal part of the business of said company within this state is to be transacted, and such town or city and county within this state shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business in this state within the provisions of this act: N.J. Corp. 15; 1889,265; Del. V. 17,147,16.

See § 8214, and compare carefully § 8499.

NOTES. — “In other states, corporations for such purposes are often not included under the general law, and are not treated of in this book. <sup>b</sup> See for other states the other articles of this chapter. <sup>c</sup> *Provided* they are located in the state, and also the property which they may acquire. <sup>d</sup> *Provided*, that such companies shall have their principal office in the state. <sup>e</sup> “Whether within or without the limits of the state.” <sup>f</sup> The Pennsylvania law divides corporations created under the general law into two classes, I. and II. This falls under class I., which includes *other* than business corporations. In Minnesota there are two divisions of corporations: those entitled to eminent domain, and all others. For these latter, see Minn., Title III.

§ 8011. **Name.** Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law: Dak. Civ. 377; Oka. 948.

The name of a corporation may not contain the names of individuals in the manner in which they are ordinarily used in partnership or business names: Wis. 1772.

It may not be a name already in use by an existing corporation in the state: Vt. 3276; Mass. 1891,257; N.Y. 1890,563,4; N.J. 1888,115; Ct. 1944; Ill. 32,2; W.Va. 53,11; Mo. 2496; Col. 239; or so nearly like it as to be calculated to deceive: Mass., N.Y., N.J. Unless its written consent be filed with the commissioner: Mass.

The name of every private corporation shall indicate that it is a corporation: Ct. 1905.

It must always include the name of the county or city in which the corporation is formed: Md. 23,42.

It must indicate the business to be carried on: Col. 237; Kan. 23,6 a.

It must (unless the organization is not for profit) begin with “The” and end with “Co.,” Ct., O., Kan., Col.

When a corporate name is the name of a person or firm there must be joined thereto some word designating the business to be carried on, followed by the word company or corporation: Mo.

All existing corporations whose corporate name and style is the name of a person or of a firm, shall change such corporate name and style to conform to the provisions of the second sub-division of the preceding section, within sixty days after this chapter takes effect, or, *ipso facto*, their corporate powers shall be forfeited: Mo. 2497.

No corporate name need contain the word “limited” to be legally good: Wis. 1772.

Whenever any persons shall have formed themselves into an incorporation according to the provisions of this act, it shall not be lawful for any other persons to become incorporated under the same name or designation, nor for the same immediate purpose. This last provision shall not apply to mining, mechanical, or manufacturing operations: N. M. 214.

No misnomer of any corporation shall (1) defeat or vitiate any gift, grant, conveyance, devise, or bequest to the same: Kan. 23,37; Tex. 598; (2) invalidate any written instrument, if it can be reasonably ascertained from it what corporation is intended: Cal. 5357; Dak. Civ. C. 377; Ida. 2635; Oka.

Nor shall a change in the name of a corporation prejudice any person not having actual notice thereof: Kan.

It shall be unlawful for the secretary of state to issue a license for any person or persons to incorporate under the name of any heretofore existing corporation organized under any general law of this state until the expiration of thirty days from and after the expiration of the existence of such corporation: *Provided*, that the corporation enjoying such name shall have the exclusive privilege of becoming incorporated under the same name at any time within the said thirty days, according to the provisions of the act to which this is an amendment: Ill. 32, 28½.

But a new or reorganized corporation may have the same name as the corporation to whose franchises it has succeeded: N.Y. 1890, 563, 4; Mo. 2538 b.

**§ 8012. The Duration of Corporations** is in many states limited:—

(1) To twenty years: Io. 1069; Kan.<sup>a</sup> 23, 11; Mo.<sup>a</sup> 2508; Tex.<sup>a</sup> 575; Ala. 1664; Fla.<sup>a</sup> 34, 3; Col. 238; Mon. G. L. 446; Ga. 1676.

(2) Fifty years: N.Y. 1875, 611, 3; N.J. Corp. 11; Minn. 2452 §; Ky. 56, 7 §; Tex. 575; Cal.<sup>a</sup> 5296; Ida.<sup>a</sup> 2584; Ariz. 238 §; W.Va.<sup>a</sup> 54, 11 \*\*, ¶¶, |||; Io. §¶; Wash. 2422; Wy.; Uta.<sup>a</sup> 2268; Nev. 803; N.M. 193.

(3) Any period whatever may be provided in the articles: Pa. Corps. 10; Io.<sup>c</sup> 1070; Kan.; Col.¶ 238; Fla. (See also § 8022.)

(4) Sixty years: N.C.<sup>a</sup> b 687.

(5) Thirty years: N.C.; Minn. 2640; Va.<sup>c</sup> 1143; Ga.<sup>b</sup> 1678.

(6) Twenty-five years: Ky.; Ariz. §§.

(7) Ninety-nine: Ill. 32, 2; La. D. 684.

(8) Forty: Md. 23, 42. But this does not apply to gas companies, schools, &c., asylums, &c., whose duration may be perpetual: Md. 1890, 339.

It may not be *less* than three years: Uta.

NOTES.—<sup>a</sup>When no other period is specified in the articles. <sup>b</sup>Applies only to corporations created by special act. <sup>c</sup>To agricultural, horticultural, and cemetery corporations. <sup>d</sup>Does not apply to railroads, banks, and corporations not for profit. <sup>e</sup>Only to mining and manufacturing companies.

**§ 8013. Renewal.** An incorporation under this chapter may be renewed [according to the provisions hereinafter made] (1) with the consent of a majority in value of the stockholders: Ala. 1668; W.Va. 54, 11; Pa. Corps. 14; Ida.; Ala.; Kan. 23, 25.

(2) Upon three-fourths vote of the stock: Io. 1069; Minn. §; Ky.; Ariz. 238.

(3) Upon two-thirds such vote: Kan. 23, 25; Ida. 2649.

(4) The corporation may act; and it does not appear that any stock vote is necessary: N.J. Supp. Corps. 21, 22; Del. V. 17, 147, 44; Miss. 1029; N.M. 1889, 93.

Expressed at a meeting of the stockholders called for that purpose: Kan., Ida., Ala.

Or at a general meeting, with special notice: W. Va.; Ky.

By mere publication, &c.: N.J.; Miss.

A certificate (1) must be filed with the secretary of state: N.J., Pa., Kan., Del., W.Va., N.M.

With the county clerk or register (§ 8023): Pa.

(3) It is given by the governor of the state: Miss. Compare § 8090.

For a period not greater (1) than was at first permissible: Io. 1069; Ky. 56, 7; Ariz. 238; W.Va.

(2) Not exceeding fifty years: N.J., Minn.

(3) Twenty years: Kan., Del.

Every corporation formed for a period less than fifty years may, at any time (within three years before, N. Y.) prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its

formation: N.Y.; Cal.; Ida. Such extension may be made at any meeting of the stockholders or members, called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock; or by two-thirds of the members: Cal.; Ida. Or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting, and a majority of the directors, and be filed in the office of the county clerk, where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation shall be extended for the specified period: N. Y. 1890,563,22; Cal. 5401; Ida. 2649. But only "if those wishing a renewal will purchase the stock of those opposed to the renewal at its fair current value:" Io. 1069; Minn. §.

If the company as heretofore (1868) (hereafter: Neb.) incorporated for the purpose of erecting any public improvement whose charter is limited as to time of completion thereof; when such company has been legally organized and has actually commenced work it may, upon petition of the directors in court, get a decree allowing further time for such completion: Kan. 23, 34 and 35; Neb. 1,16,57-58.

**§ 8014. Effect of Renewal.** That nothing herein contained shall be construed to interfere with the right of the state of New Jersey, reserved by any law now or hereafter existing, to acquire the property and franchises of any such corporation, or at any time to abolish or repeal, alter or amend the charter of the same, nor shall this act be construed to continue any irrevocable or other contract with the state contained in any charter beyond the time originally fixed for its expiration: N.J. Supp. Corps. 23; 1889,233.

Nor as continuing in force and operation any special provision relating to taxation, or exemption therefrom, in the charter of any corporation whose corporate existence may have been or hereafter shall be extended in conformity with the terms of said act; but each corporation whose corporate existence may have been or shall be extended as authorized thereby, shall be assessed for taxes in accordance with the provisions of the general law of this state relating to the taxation of corporations: N.J. Supp. Corps. 24.

It shall expressly accept the provisions of the constitution of this state and of this act, and expressly surrender all privileges conferred upon such corporation by its original charter, that are not enjoyed by corporations of its class under this act or general laws of the commonwealth: Pa. Corps. 14.

**§ 8015. Stock.** Corporations organized for profit must have a capital stock: O. 3235.

Corporations not for profit have generally no stock. See Wy. 501.

It may not exceed (1) twenty million dollars: Uta. 2273.

One million: N.C. 677,1889,170; S.C. 1886,288,9; Vt. 3288; 1884, 104; Pa. Corps. 29.

Five million: W.Va.†† 54,5; N.Y. 1875,611,11.

Ten million: Ala. 1891,91.

It is unlimited in amount: Miss. 1882,26,2; Ark. 961. So, of course, in other states where the laws are silent.

*The amount of stock cannot be less than \$2000:* N.J. Corps. 11.

\$500: Vt.; Va. 1148,1887, Ex., 14.

\$10,000: Minn.\* 2642.

\$1,000 must be actually paid in: N.J.

*Par value.*

(1) The par value of the shares must be \$100 : Mass. 105,16 ; Vt. ; Va. 1106 ; Fla. 34,39.

(2) It may not be more than \$100 : Vt. 3288 ; N. Y. ; Pa. ; Ill. 32,7 ; Minn. ; Col. 241.

(3) It may not be less than \$10 : N. Y. ; Ill. ; Va. 1148 ; Col. ; Fla. 1885,3907. Not less than \$2 : Minn.\* Than \$1 : Col. 1889, p. 96.

(4) It must be \$100, \$50, or \$25 : Ct. 1944.

(5) It must be \$25 : Ark. 961.

Corporations previously organized with shares of a par value other than \$100 may change the par value to \$100 : Mass. ; Tenn. 1889,102.

The capital stock shall be divided into shares of such amount each as may be prescribed by the charter of incorporation ; but every share shall be of the same amount : W. Va. 53,15,54,4.

There shall not be less than five stockholders. If the number be at any time reduced below five, and so remain for six months continuously, the corporation shall be dissolved : W. Va. 53,17.

**Art. 802. The Articles of Incorporation.**

§ 8020. **Name and Signatures.** The instrument by which a private corporation is formed [under the general law] is called "articles of incorporation : " Vt. 3277 ; Ct. 1944 ; O. 3236 ; Wis. 1772 ; Io. 1060 ; Minn. ; Neb. 16,126 ; Ky. 56,3 ; Mo. 2492 ; Ark. 960 ; Cal. 5289 ; Ore. 3218 ; Wash. 2422 ; Dak. Civ. C. 381 ; Ida. 2578 ; Fla. 34,4 ; Ariz. 234 ; Oka. 952.

"The certificate of incorporation : " N.Y. 1875,611,3 ; 1890,563,2 , N.J. Corps. 10 ; Md. 23,42 ; Del. V. 17,147,11 ; Va. 1145 ; Nev. 803 ; Col. ; 238 ; Wy. ; D.C. 553.

The "charter : " Pa. Corps. 6 ; Kan. 23,6 ; Tex. 567 ; Miss. 1028 ; La. D. 685 ; the "declaration : " S.C. 1886,288,1 ; Ga. 1676 ; Ala. 1660 ; the "license : " Ill. 37,1 ; the "agreement : " W.Va., Uta. 2267.

§ 8021. **Petition.** (See also § 8004.) The petition for incorporation or articles may be made (1) by a number of persons not less than three : Vt. 3276 ; Ct. 1944 ; N.Y. 1880,23 ; N.J. Supp. Corps. 48 ; Ill. 32,2 ; Wis. 1771 ; Minn.\* 2638 ; N.C. 677 ; 1885,19 ; Ark. 960 ; Tex. 565 ; Ore. 3217 ; Nev. 803 ; Col. 238 ; Dak. Civ. C. 384 ; Men. G. L. 446 ; Wy. 501 ; Ala. 1887,103 ; N.M. 193 ; D.C. 553 ; Oka. 955.

(2) Not less than five : Minn.\*\* 2448 ; Kan. 23,8 ; Pa. Corps. 1 ; O. 3236 ; Md. 23,42 ; Va. 1145 ; W.Va.†† 54,6 , Tenn. 1692 ; Cal. 5292 ; Uta. 2267 ; Ida. 2576.

(3) By any number : Io. 1058 ; Ky. 56,1 ; Ga. 1676 ; Fla. 34,2 ; Ariz. 232.

(4) Two or more : S. C. 1886,288,1 ; Wash. 2422.

(5) Not less than six : La. D. 683. And not more than seven : Ill.

Such persons are in this work termed *the promoters* ; in some states they are called *petitioners*, in others *commissioners* : Ill. 32,2.

It is addressed (1) to the Secretary of State : Ill., S.C.

(2) To the Circuit or Corporation Court, or the judge thereof in vacation : Va. So, the Superior Court : N. C. ; Ga. The associate judge for the county . Del. V. 17,147,12.

(3) To the State : Tenn.

Three of the promoters must be resident in the State : Pa. Corps. 6 , Kan.

A majority must be so resident : <sup>a</sup> N.Y., <sup>b</sup> O., Md., <sup>a</sup> Ida., Cal. One third : Dak., Uta.

All must be : Wis. See also § 8023.

All must be citizens of the United States or resident, with *bona fide* intention to become so : Md. 23,42.

NOTE. — <sup>a</sup> Or citizens, in the noted states. <sup>b</sup> And citizens.

§ 8022. **Contents.** In order to form any such corporation, the persons desiring to do so<sup>a</sup> (all the *promoters* must in nearly all states make and sign a written *charter, petition, certificate, or articles of incorporation*,<sup>b</sup> (§ 8020) containing (1) a declaration that they associate for the purpose of forming a corporation under the general law: Vt. 3277; Ct. 1944; Ill. 32,2; Wis. 1772.

(2) The purpose, object, or business of the incorporation: Vt.; Ct.; N.Y. ¶¶ 1875, 611,3; 1890,23; N.J. Corps. 11; Pa. Corps. 6; O. 3236; Ill.; Wis.; Io.<sup>b</sup> 1060,3; Minn. 2451; Kan. 23,6; Neb.<sup>b</sup> 16,131; Md. 23,42; Va. 1145; Ky.<sup>c</sup> ¶ 56,5; Del. V. 17,147,11; W.Va. 54,6; N.C. 677; 1885,19; Tex. 567; Ark. 962; Cal. 5290; Ore. 3220; Nev. 803; Col. 238; Wash. 2422; Dak. Civ. C. 386; Ida. 2579; Mon. G. L. 446; Wy. 501; Uta. 2268; S.C. 1886,288,1; Ga. 1676; Ala. 1660; Miss. 1028; Fla.<sup>b</sup> ||| 34,33; La. D. 685; Oka. 957; N.M. 193; Ariz. 234; D.C. 553.

Which shall be distinctly and definitely specified: Miss., Ark.

"In general terms:" Uta.

(3) The name and (except in Vermont and Mississippi, the location or principal place of business) of the corporation: Vt.; Ct.; N.Y.; N.J.; Pa.; O.; Ill.; Wis.; Minn. 1772; Io.;<sup>b</sup> Kan.; Neb.<sup>c</sup> ¶; Md.; Del.; Va.; W.Va.; N.C.; Ky.<sup>b</sup> ¶¶; Tex.; Cal.; Ore.; Nev.; Col.; Wash.; Dak.; Ida.; Mon.; Wy.; Uta.; S.C.; Ga.; Ala.; Fla. ||||: La.; Miss.; N.M.; Ariz.; D.C.; Oka.

The location must specify the principal office, and also the place or places where the operations of the corporation are to be carried on: Md., Col., Wash., Mon.

It may designate "one or more places where the company may carry on their business in the territory:" Mon. G. L. 448; Wy. 503

(4) The duration of existence of the corporation: N.Y., N.J., Pa., Ill., Wis.,<sup>e</sup> Io.<sup>b</sup>, Minn., Kan., Neb.<sup>b</sup>, Tex., Md., Ky.<sup>b</sup>, Del., N.C., Cal., Ore.,<sup>e</sup> Nev., Col., Wash., Dak., Ida., Mon., Wy., Uta., Ga., Fla.<sup>b</sup>, Miss., N. M., Ariz., D.C., Oka.

For limit of this, see § 8012.

(5) The capital stock, if any, the number of shares thereof, and the amount of each share. Vt.; Ct.; N.Y.; N.J.; Pa.; O.; Ill.; Wis.; Io.;<sup>b</sup> Minn.; Kan.; Neb.<sup>c</sup> ¶; Md.; Del.; Va.; W.Va.; N.C.<sup>b</sup> 677,679; Ky.<sup>c</sup> ¶<sup>b</sup>; Ark. 961; Tex.; Cal.; Ore.; Nev.; Col.; Wash.; Dak.; Ida.; Mon.; Wy.; Uta.; S.C.;<sup>b</sup> Ala.; Fla. ||; La.; N. M.; Ariz.; D.C.; Oka.

The times and conditions on which it is to be paid in: Io.<sup>c</sup> ¶, Minn., Neb.<sup>c</sup> ¶, Ky.<sup>c</sup> ¶, Fla. ||, La., Ariz.

"The amount with which they will commence business:" N. J.; Del.; Ida.; Ga.

"Actually paid in:" Ga., Ark. 968.

(6) The designation of general officers and of the number of the directors: Pa.; Wis.; Io.;<sup>b</sup> Minn. 34,2; Kan.; Neb.<sup>c</sup> ¶; Md.; Ky.<sup>c</sup> ¶; Tex.; Cal.; Nev.; Col.; Wash., Dak., Ida.; Mon.; Wy.; Uta.; Fla. ||; N.M.; Ariz.; D.C.; Oka.

The name (and residence) of those who are appointed for the first year:<sup>g</sup> Pa., Minn., Kan., Tex., Cal., Md., Va., Nev., Col., Wash., Dak., Ida., Mon., N.M., Wy., D. C., Oka.

So the principal duties of the several general officers respectively: Wis.

"Their qualifications." Dak., Uta., Oka.

So "the times at which the officers will be elected:" Io.<sup>b</sup>, Minn., Ky.<sup>b</sup>, Uta., Fla.<sup>b</sup>, Ariz.

"The mode:" La.

And the method and conditions upon which members shall be accepted, discharged, or expelled : Wis., Uta.

(7) The names (and residence : N.J., Pa., Ala.) of shareholders, and amount subscribed for by each : N.J. ; Ct. ; Pa. ; Ark. 968 ; Uta. ; Cal. ; Ida. ; Ala.

So, the names and residences of the incorporators : Minn. ; Md. ; Ky. ; Uta. ; S.C. ; Miss. ; Ariz. ; Del. ; W.Va. ; N.C. ; Ark. 960 ; N.M.

The articles of incorporation shall provide a mode by which a member may, at any time, withdraw from such incorporation, and also the mode of determining the amount to be received by such member upon withdrawal, and for the payment thereof, subject only to the rights of creditors of the corporation ; Ky. 56,7.

(8) The highest amount of indebtedness or liability to which the corporation is at any one time to be subject, (which must, in Io.,<sup>c</sup> Neb., Ky., in no case exceed two thirds of its capital stock ; and see § 8207) : Io.<sup>b</sup> <sup>c</sup> 1061,1063 ; Minn. ; Neb.<sup>b</sup> 16,128 ; Ky.<sup>b</sup> <sup>c</sup> 56,4-5§ ; Fla. ;<sup>b</sup> Ariz. §.

(9) "Such other provisions or articles not inconsistent with law, as may be deemed proper : " N. J., Wis., Md., Uta., S. C., Ala., Miss.

(10) Whether private property is to be exempt from corporate debts : Io.,<sup>b</sup> Ky.,<sup>b</sup> Uta., Ariz. See § 8140.

(11) "The powers to be exercised : " Miss.

(12) The amount of real estate proposed to be held by it : Va., Del. ; and personal : Del.

(13) "The designation of the officer on whom citation may be served : " La.

(14) "The mode of liquidation at the termination of the charter : " La.

(15) When a corporation is created under the laws of the state for the purpose of carrying on part of its business beyond the limits thereof, the certificate shall so state ; and also state the place where the principal office of the company in the state shall be kept, and the name of the county in which its principal business within the state is to be carried on : Col. 238 ; Mon. G. L. 449 ; Wyo. 504.

(16) The articles of incorporation of any railroad or wagon-road (or telegraph, Cal., Ida. Or other internal improvement not located in one place, O., Ore.) must also state : —

1. The kind of road (or improvement) intended to be constructed : O. 3237 ; Tex. ; Ore. ; Cal. ; Oka. 958 ; Dak. Civ. C. 387 ; Ida. 2580.

2. The place from and to which it is intended to be run, and all the intermediate branches : Dak., Ida., O., Ore., Tex., Cal., Oka.

3. The counties through which it is intended to be run : Dak., O., Ore., Tex., Oka.

4. The estimated length (and cost, except in Cal., Ida.) of the road : Dak., Ida., Tex., Cal., Oka.

5. That at least 10% of the stock has been paid in : Cal. 5291.

When the organization is for a purpose which includes the construction of an improvement which is not to be located at a single place, the articles of incorporation must also set forth —

1. The kind of improvement intended to be constructed.

2. The *termini* of the improvement, and the counties in or through which it or its branches shall pass : O. 3237.

(17) Each intended corporation named above, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit : —

1. One thousand dollars per mile of railroad.

2. One hundred dollars per mile of telegraph lines.

3. Three hundred dollars per mile of wagon-roads : Cal. 5293 ; Ida. 2582.

The affidavits of at least two of the incorporators named in the agreement shall be annexed thereto, to the effect that the amount therein stated to have been paid on the

capital, has been in good faith paid in, for the purposes and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of the corporation : W. Va. 54,8.

Before the secretary of the state (or the recorder of the county : Ida.) issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary or treasurer, named in the articles, that the amount of the capital stock thereof required by law has been actually subscribed : Ida. 2583 ; Cal. 5295.

And ten per cent. thereof actually paid in : Cal.

"To this shall be added the oath or affirmation of three or more of their number to the effect that they have commenced, or it is *bona fide* their intention to commence and carry on, the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid, or is able and will pay the amount of his stock subscribed for, provided that said acknowledgment shall not be made before the probate judge until ten per cent. of the stock subscribed by each shareholder has been paid in : " Uta. 2268.

Any corporation hereafter organized in this territory may provide in its certificate of incorporation for the issuance and disposal of preferred stock of the kind and character above provided for, to an amount in such certificate stated : Wy. 1888,24,2.

NOTES. — *a* See § 8021. *b* These statements are in the noted states not put in the articles, but in the published notice (§ 8024) of incorporation. *c* Also, in the articles. *d* Except life insurance companies and educational, agricultural, benevolent, social corporations, corporations for gymnastic purposes, for railroads, and other works of internal improvement, and banks, and savings banks : W. Va. 54,11. *e* This provision may be inserted, but is not necessary. *f* Except risks of insurance companies ; railroad bonds ; bonds secured on real estate, &c. *g* For the first six months : Nev. ; "until the elections : " Dak ; for the first three months : Mon. ; N.M. ; not less than two, nor more than six months : Wash.

§ 8023. **Forms.** The articles must be signed, and proved or acknowledged by all the promoters before some officer authorized to take acknowledgments of conveyances of real estate<sup>a</sup> (§ 1582) : N. Y. 1875,611,3 ; N. J. Corps. 11 ; Pa. Corps. 8 ; O. 3236 ; Ill. 32,2 ; Wis. 1772 ; Io. 1060 ; Kan. 23,8 ; Md. 23,42 ; Va. 1145 ; W. Va. 54,8 ; N.C. 678 ; Ky. 56,3 ; Tex. 568 ; Cal. 5292 ; Ore. 3218 ; Nev. 803 ; Col. 238 ; Wash. 2422 ; Dak. Civ. C. 388 ; Ida. 2581 ; Mon. G. L. 446 ; Wy. 501 ; Uta. 2268 ; N.M. 193 ; Ariz. 234 ; D.C. 553 ; Oka. 959.

The official character of the officer must be certified by the clerk of the county or county court : O. 3238.

The articles must only be signed (1) by the president and a majority of the directors : Ark. 968 ; Del. 1887,147,11. (2) By the incorporators : Vt. 3277 ; Io.

It must be signed by all, and acknowledged by at least three : Pa., Uta.

It need be signed by three only, of whom two must be citizens of the State : Tex. 568. One third must be : Dak., Oka.

It must be signed by five, a majority of whom are so resident : Cal., Ida.

The following states have statutory forms of petitions : —

"The undersigned agree to become a corporation by the name of (here insert the name by which it is intended the corporation shall be known), for the purpose of (here describe fully and particularly the purpose for which the corporation is to be formed, and the kind of business intended to be carried on by it), which corporation shall keep its principal office or place of business at —, in the county of —, and is to expire on the — day of —. And for the purpose of forming the said corporation, we have subscribed the sum of — dollars to the capital thereof, and have paid in on said subscriptions the sum of — dollars, and desire the privilege of increasing the said capital



by the sale of additional shares, from time to time, to — dollars in all. The capital so subscribed is divided into shares of — dollars each, which are held by the undersigned respectively as follows, that is to say; by (here insert the name of each incorporator, with his residence and the number of shares held by him). And the capital to be hereafter sold is to be divided into shares of the like amount. Given under our hands, this — day of —": W. Va. 54,6.

They shall copy the form of charter adapted to the purpose, filling the necessary blanks, and append to the same an application in these words: "We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a charter of incorporation, for the purposes and with the powers declared in the foregoing instrument. Witness our hands, the — day of —, 18—." (To be signed by the applicants): Tenn. 1692.

"We, the subscribers, hereby associate ourselves together as a corporation, under the laws of the State of Vermont, to be known by the name of —, for the purpose of —, at — in the county of — in said state, with a capital stock of —, divided into — shares of — dollars each. Dated at —, this — day of —, A.D. —": Vt. 3277.

NOTE. — "The probate judge: Uta.; the recorder or a notary: Pa. 1891,12; the clerk of court: N.C.

§ 8024. **Publication and Record.** These articles<sup>a</sup> are in most states to be recorded or filed (1) in the registry of deeds (see § 1613) for the county where the corporation is located;<sup>a</sup> Pa. Corps. 9; Wis. 1772, Io. 1060; Minn. 34,2 and 110; Del. V. 17,147,12; W.Va.<sup>a</sup> 54,20; Tenn. 1693; Mo.<sup>a</sup> 2492; Col. 238; Wash. 2422; Ida. 2584; La. D. 686; Ariz. 234; D.C. 553.

(2) With the county clerk: N.Y. 1890,563,3; N.J.; Ind. 3001; Neb. 1,16,126; Ky. 56,3; Ark.; Ore. 3218; Nev. 803; Mon. G. L. 446; Cal. 5296; Wy. 501; Fla. 34,4.

(3) With the clerk of the court to which they are addressed (see below, and § 8021); Md., Va., N.C., Ga.

(4) With the probate clerk: N.M.<sup>a</sup> 193; Uta. 2269.

And the articles or charter or, in states above mentioned, a copy must be filed with the secretary of state: Vt. 3278; N.Y. 1890,563,3; N.J.; Pa.; Ct. 1944; O. 3238; Ill. 32,2; Wis.; Io.; Minn.; Kan. 23,9; Neb. § 1,16,127; Va. 1145; W. Va. 54,9; Ky. § 56,4; Tenn.; Mo. 2492; Ark.; Cal.; Tex. 569; Ore.; Nev.; Col.; Wash.; Dak. Civ. C. 389; Ida.; Mon.; Wy.; S.C. 1886,288, 1 & 7; Uta. 2271; Fla.; N.M. 193; Ariz. 235 §; Oka. 960.

And must be recorded by him or such clerk: Vt.; N.Y. 1875,611,7; Pa.; O.; Io.; Minn.<sup>a</sup> 3147; Kan.; Neb.; Va.; W.Va. 54,17; Ky.; Tenn.; Ark.; Tex.; Col. 239; Dak. Civ. C. 390; Mon. G. L. 447; Wy.; Uta.; S.C.; Miss. 1030; Fla.; N.M. 220; Ariz.; Oka. 961.

The original is then delivered to the parties: Miss., Vt.

Such record, with the oath (see § 8022) must be made within ten days from the execution of the articles: Uta.

The record with the county clerk must be made within three months *after* the certificate referred to below: W. Va. 54,20.

If the corporation establishes agencies in any other county, the instrument must be registered there also: Tenn. 1694.

So, a copy must be filed in each county where business is to be carried on: Wy.; Col. 1889, p. 50; Fla.

And also with the register of the county where the chief business is to be carried on: Col.

No corporation hereafter formed shall purchase, locate, or hold property in any county of this state, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property (except the county where the original articles of incorporation are filed) ; and if any corporation hereafter acquire any property in any county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks, and certified copies thereof, shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation, shall be filed at the places directed by the general law and this section ; provided, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section ; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same : Cal. 5299 ; Ida. 2587 (in substance).

The secretary of state shall have published and bound with the acts of each General Assembly, a certified list of all corporations organized under this chapter, giving the name and date of organization of each corporation, and such publication shall be legal evidence of the existence of such corporations : Tenn. 1697.

The articles, certificate or petition, are also to be published in a newspaper : Vt. ; Ct. 1948 ; Pa. Corps.<sup>b</sup> 7 ; Io. 1062 ; Minn. ; Neb. 1,16,130 ; Del. V. 17,147, 12 ; N.C. 679 ; Ky. 56,5 ; Ga. 1676 ; Miss. 1028 ; Fla. 34,33 ; La. ; Ariz. 236.

For four weeks : Io., Minn., Neb., Ky., Ga., Fla., La. Three : Miss., Pa. Six days : Ariz. Ten days : Del.

Within three months after filing articles : Ky.

The directors shall cause the articles of association to be published in a newspaper published in the county where the corporation is located. A majority of the directors shall make, sign, and swear to a certificate setting forth a true copy of the articles of association, which certificate shall state that such publication has been made, and also the name of the newspaper containing such publication, with the date thereof ; and shall also state the names and residences of the subscribers thereto, the amount of the stock taken by each, the amount actually paid for in cash, and the amount paid for in property, specifying the same and giving the actual value thereof, and in case any portion of said property consists of letters-patent or rights under the same, the number and date of the patents and the nature of the invention shall be given ; which certificate shall be deposited in the office of the secretary of this state, who shall cause the same to be recorded, and a duplicate thereof shall be recorded in the town clerk's office of the town where said corporation is located. No such certificate shall be received or recorded by the secretary of this state, or by any town clerk, which shall fail to state that twenty per cent. or more, as the case may be, of the stock has been paid for in cash as required by this chapter : Ct. 1948.

NOTES. — <sup>a</sup> What is filed is the secretary of state's certificate (§ 8025) : N.Y. 1875,611,7. <sup>b</sup> "In the county where is the principal business place of the corporation ; in two papers."

§ 8025. **Anomalous Statutes, Special Restrictions.** Every corporation hereafter organized or which shall hereafter increase its capital stock shall, within thirty days after organization or after such increase, file in the office of the secretary of state a certificate under oath of its treasurer, or such officer as may be duly authorized by the corporation to make the same, setting forth the name of the corporation, the date of organization, and the amount of capital stock paid in upon organization, the amount of increase of capital stock paid in, with the date thereof, the town in which such corporation is located, and the name and post-office address of its treasurer: R. I. 152, 19.

They shall also make and subscribe an oath or affirmation before the recorder to be indorsed on the said certificate, that the statements contained therein are true. The said certificate, accompanied with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of this commonwealth, who shall examine the same, and if he find it to be in proper form and within the purposes named in the second class [see § 8010] specified in the foregoing section, he shall approve thereof and endorse his approval thereon, and direct letters-patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen: Pa. Corps. 9.

The incorporation of any association of persons for the purposes named in this act, or accepting the same, shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature; and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter; and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same: Pa. Corps. 11.

No corporation of the second class shall go into operation without first having the name of the institution or company, the date of incorporation, the place of business, the amount of capital paid in, and the names of the president and treasurer of the same, registered at the office of the auditor-general: Pa. Corps. 12.

Upon the application of the president and secretary of any corporation heretofore or hereafter created under any general or special law of this commonwealth, accompanied by due proof that said corporation has complied with all the conditions provided by law and the constitution to enable it to have a corporate existence and transact business, it shall be lawful for the governor to issue letters-patent under the great seal of the commonwealth, in such form as he may prescribe, to such corporation, declaring it to be, and erecting it into a body corporate or politic in deed and in law: Pa. Corps. 15.

No institution or company incorporated by or under any law of this commonwealth shall go into operation without first having the name of the institution or company, the date of incorporation, the place of business, the amount of capital paid in, and the names of the president and cashier or treasurer of the same, registered in the office of the auditor-general; and any such institution or company, who shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected in an account settled by the accountant officers, as taxes on bank dividends are now settled and collected: Pa. Corps. 83.

"When the steps necessary to an organization of a corporation, municipal or private, under any general law, have been completed, a statement thereof may be filed in the office of the clerk of the Circuit Court of the proper county; and such court, at its next term thereafter, shall, on proof of such organization, cause to be entered of record, in the order book, an order declaring the existence of such corporation; and such order shall be conclusive as to the fact of such existence at the date which such court may fix in such order:" Ind. 3001.

So, the secretary of state's certificate below referred to, is to be recorded with the register of deeds in the county where the corporation is located: Ill.

Upon report of such first meeting, as in §§ 8034,8035, the secretary of state issues a certificate of organization, and the company may then proceed to business: N.Y. 1875,611,7: Ill. 32,4.

A copy of such certificate must be recorded in the county of the principal office: N. Y.

"When a certificate is executed it must be submitted to one of the judges of circuit where the office is located, or to one of the judges of the supreme bench of Baltimore city, if the principal office is in Baltimore, in order that the judge may determine whether it is in conformity with the law, and if he so determine, he shall certify accordingly upon the certificate; which shall then be recorded with the clerk of such court:" Md. 23, 43-44; Del. V. 17,147,12.

So, the court or judge (see § 8020) has discretion to grant or refuse the charter, or to grant it upon such other terms as seem reasonable: Va. 1145.

Upon the completion of the organization of the company and the payment to the treasurer of the company, or some officer designated for that purpose, in cash, of at least twenty per cent. of the capital subscribed, payable in money, and the payment of the remainder of the capital so subscribed for payable in money being secured to be paid in such instalments and at such times as may be provided in the written declaration required by Section I., and also the delivery to such officers or officer, of at least twenty per cent. of the property so subscribed to the capital stock, with security for the delivery of the remainder of said property so subscribed to the capital as may be promised in said written declaration required by Section I., the board of corporators shall in writing, over their signatures, certify the same to the secretary of state, who shall issue to the company a certificate that they have been fully organized according to the laws of South Carolina, under the name and for the purpose indicated in their written declaration, and that they are fully authorized to commence business under their charter, a copy of which certificate shall be filed and recorded in the office of the register of mesne conveyance for each county where such corporation shall have a business office: S.C. 1886,288,5.

"If, upon hearing such petition, the court (see § 8021) shall be satisfied that the application is legitimately within the purview and intention of this code, it shall pass an order declaring the said application granted:" Ga. 1676,2.

The proceedings of the meetings of the subscribers must be reduced to writing, and must be signed by them and delivered to the commissioners, who must return and file the same in the office of the judge of probate; and the officer or person to whom the subscriptions for stock have been delivered, must make a copy thereof, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received payment in cash of twenty per cent., and from which he has received contracts in writing, as hereinbefore specified; upon the filing of such papers, the judge of probate must issue to the subscribers, their associates and their successors, a certificate stating that they are duly organized as a corporation, under the name and style, and for the purposes expressed in the declaration, having the powers, capacity, and authority conferred by law: Ala. 1663.

Whenever any banking, mercantile, or other business firm desire to become incorporated without a change of the firm name; such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four successive weeks, in some newspaper published at the seat of state government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and if not, then in some newspaper in some adjoining county, and until such notice shall have been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof: Tex. 603.

"The charter so proposed shall be submitted to the governor for his approval, who shall take the advice of the attorney-general as to the constitutionality and legality of

the provisions of such charter, and if the governor approve it, he shall write his approval at the bottom of it, and sign his name thereto, and shall also cause the great seal of the state to be thereto affixed, by the secretary of state; but the governor may require amendments or alterations to be made previous to signing the same, or if deemed expedient by him, he may withhold his approval entirely. And the powers therein specified shall, by the approval of the charter, be vested in such corporation, and it shall go into operation at the time, and on the terms and conditions specified:" Miss. 1028.

**§ 8026. Certificate of Incorporation.** The clerk or register of deeds issues a certificate of incorporation: N.C. 679; Ida. 2584.

So, the secretary of state: Minn. 3147; W.Va. 54,9; Cal. 5296; Tenn. 1693; Tex.; Dak. Civ. C. 389; Ida.; Uta. 2271; Oka.

The court makes an order of incorporation: Ga.; Ind. 3001. See § 8025.

The existence of the corporation dates from such filing of the articles: Vt. 3278; Ct. 1944; N.J. Corps. 13; Minn. 34,4 and 110; Pa. Corps. 9; O. 3239; Wis. 1772; Io. 1064; Kan. 23,10; Neb. 16,132; Md. 23,45; Mo.; Tex. 570; Va. 1146; W.Va. 54,9; Ky. 56,6; Tenn.; Cal.; Ore. 3221; Nev. 805; Wash. 2424; Dak.; Ida.; Mon. G. L. 447; Wy. 502; Uta.; Fla. 34,4; N.M. 195; Ariz. 237; D.C. 554; Oka. 237.

And the validity of the same may not be collaterally questioned: Tenn.; and see § 8031.

And it may thereupon commence business: Io.; Neb.; Ky.; Ark. 968; Ariz.

And its acts are valid if the articles are filed with the secretary of state and published, as herein required, within three months: Io., Ky., Ariz.

Compare § 8025.

**§ 8027. Certified Copy of Articles as Prima Facie Evidence.**

A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, or other officer with whom it is filed: (Nev., Wash., Ida.) must be received in all the courts and other places as *prima facie* evidence (1) of the facts therein stated: N.J. Corps. 12; Pa. Corps. 9; Minn. 3147; Ill. 32,27; W.Va. 54,10 and 19; Del. V. 17,147,13; Md. 23,46; N.C. 682; Tenn. 1714; Cal. 5297; Tex. 569; Nev. 804; Col. 265; Wash. 2423; Dak. Civ. C. 391; Ida. 2585; Mon. G. L. 456; Wy. 511; Miss. 1030; N.M. 194; D.C. 593; Oka. 962.

(2) Of the existence of the corporation: N.Y. 1875,611,7; 1890,563,7; O. 3238; Kan. 23,9; Va. 1150; W.Va. 54,10; N.C. 682; Tex. 569; Ark. 968; Ore. 3219; Col. 239; Dak.; Mon. 447; Wy. 502; Uta. 2271; Ga. 1676; N.M. 220; Mo. 2492; Oka.

Such copy must be under the great seal of the State: Ill., Kan., Tex., Ark., Va., W.Va., Cal., Col., Dak., Wy., Uta., N.M., Mon.

If either of the duplicate certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed: N.Y. 1890,563,6; N.J. Supp. Corps. 96.

**§ 8028. Failure to Publish or Record the Articles,** as in § 8024 provided, renders the individual property of the stockholders liable for the corporate debts (see also Art. 811): Io. †† 1068; Minn. 2456 §; Neb. 1,16,139.

And, also, in one state is cause of forfeiture of the charter (see Art. 834): Neb. 1,16,142.

No mere informality in organization has the effect of rendering a charter null, or of exposing a stockholder to any liability beyond the amount of his stock: La. D. 690.

**Art. 803. The Promoters.**

§ 8030. **Liabilities of the Promoters.** Until the directors are elected they have general direction of the incorporation : Wis. 1773.

The promoters, president, and directors are personally liable for debts contracted before the corporation is duly created : Vt. 3279.

The promoters may make such rules as may be necessary for perfecting its organization, accepting members, or regulating the subscription to the capital stock : Wis. 1773.

"The persons so named and their associate subscribers to stock before the date of the [special] act shall be authorized to hold the franchise or privileges granted until the corporation is organized : " Mass. 105,9.

Expenses incurred prior to the organization of any company for preliminary service, or for stationery, or advertising, may, if deemed reasonable by the president or directors, be paid by their order : Va. 1186.

§ 8031. **Corporations de Facto.** No body of men acting as a corporation under the provisions of this chapter are permitted to set up the want of a legal organization as a defence to an action against them as a corporation. Nor, conversely, shall any person sued on a contract made with them as a corporation, or for an injury to its property, or a wrong done to its interest, be permitted to set up such want of legal organization as a defence : Io. 1089 ; Neb. 16,144 ; Ky. 56,18 ; Tenn. 1713 ; Fla. 34,28 ; Ariz. 249.

Persons acting as a corporation under the provisions of this act shall be presumed to be legally organized until the contrary is shown ; and no such franchise shall be declared actually null or forfeited except in a regular proceeding brought for that purpose : Ky. 56,17 ; Tenn. 1712 ; Ariz. 248.

The due incorporation of any company, claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such *de facto* corporation may be a party ; but such inquiry may be had at the suit of the state (1) on information of the attorney-general : Cal. 5358 ; (2) of the district-attorney : Ida. 2636 ; (3) in the manner prescribed in the Code of Civil Procedure : Dak. Civ. C. 376 ; Oka. 947.

If any person or persons being, or pretending to be, an officer or agent, or board of directors of any stock corporation, or pretended stock corporation, shall assume to exercise corporate powers, or use the name of any such corporation, or pretended corporation, without complying with the provisions of this act, before all stock named in the articles of incorporation shall be subscribed in good faith, then they shall be jointly and severally liable for all debts and liabilities made by them, and contracted in the name of such corporation or pretended corporation : Ill. 32,48.

No person who assumes an obligation to an ostensible corporation as such shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact has been adjudged in a direct proceeding had for the purpose : Tex. 599.

Any obligation, contract, mortgage, trust-deed, agreement in writing or otherwise, heretofore made and entered into by or with any association of persons, either as an actual or pretended corporation, or as individuals who may become a body politic and corporate, under the provisions hereof, for the payment of money or the performance of any lawful act, shall be binding upon such obligor or obligors, in favor of such body politic and corporate, just as if such obligation, contract, mortgage, trust, or agreement had been originally made and entered into by and with such body politic and corporate when it was legally in existence : Tenn. 1700.

Any instrument evidencing such obligation, contract, mortgage, trust-deed, or agreement, required by existing laws to be registered, whether registered before or after the creation of such body politic and corporate, shall be deemed, taken, and considered as notice to the world, from the time of such registration, notwithstanding the fact it may have come into existence subsequent to the registration of such instrument or instruments : Tenn. 1701. See also §§ 8096,8110.

**§ 8032. Opening Books.** In a few states, the petition (§ 8020) having been duly filed, the secretary of state (judge of probate : Ala.) issues a license to the promoters (or two or more of them : S.C., Ala.) to open books for subscription to stock : Ill. 32,2 ; S.C. 1886,288,2 ; Ala. 1661.

“Requiring them to give such notice as he may deem fit :” S.C.

So in others the promoters may open books after having filed the articles (§ 8024) with the secretary of state : Kan. 23,16 ; Mo. 2494 ; Ore. 3222.

“Within three months after :” Kan., Tex.

So the persons named in the articles of incorporation, or a majority of them, shall open the books for subscription : O. 3242.

So, the directors : N.Y. 1890,564,41 ; Tex. 578 ; Dak. Civ. C. 396 ; Oka. 968.

“At such time and place as they deem expedient :” N.Y., O., Ill., Kan., Mo., Tex., Ore., Dak. Or in the manner provided in the by-laws : Dak. As the judge appoint : Ala.

After having given at least thirty days notice thereof in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened : O., Kan., Va., Tex. Such notice may be waived in writing by all the incorporators : O. 1891, p. 280. The books may be kept open until the whole amount is subscribed : N.Y., Tex., Kan., Mo.

When commissioners are appointed by an act of incorporation to open books for subscriptions to the capital stock in such corporation, such commissioners shall give notice by publication in a newspaper, of the time and place where such books will be opened, at least thirty days before the time of opening such books : Vt. 3259 ; Va. 1106.

The books for subscriptions shall be kept open for ten days. If within that time more than the whole capital stock be subscribed, the commissioners, at the place first named in the act, shall reduce the subscriptions so as to have the amount of such capital stock, and no more ; deducting the excess from the largest subscriptions in such manner that no subscription shall be reduced while any one remains larger : Va. 1110.

If at the end of the ten days so much of the capital stock shall not have been subscribed as is necessary to incorporate the subscribers, the books may thereafter be continued open or closed, and reopened from time to time, with or without notice, as the commissioners at the first-named place may deem best, until the whole capital stock shall be subscribed, or until the election of the president and directors : Va. 1111.

Immediately after the election of the president and directors, (1) the books for receiving subscriptions shall be delivered to them. If the whole capital stock has not been subscribed, they shall take measures for obtaining subscriptions of the residue. They shall not, to obtain such subscriptions, sell the stock at less than par, but may fix the price of such residue at a premium, which shall be for the benefit of all the stockholders ratably : Va. 1124.

(2) The money paid upon shares at the time of subscribing shall be paid, by the commissioners who have received the same, to such person or in such manner as the president and directors may require. In case of failure so to pay, the company may recover the same against such commissioners by warrant or by action, according to the amount, or by motion in lieu of an action : Va. 1126.

Upon the issuance of the certificate of incorporation by the secretary of state, the board of incorporators shall turn over to the company the money, subscription lists, notes, obligations, or other papers they may have taken as incorporators in the formation of the company, and henceforth all such money, lists, notes, obligations, or other papers shall belong to and be the property of the company, and shall be as binding on the company as if taken and made by themselves: S.C. 1886,288,6.

If any person who has received a sum of money on a subscription to the capital stock of a corporation, fail to account for and pay over the same as the board of directors may require, or if any stockholder fail to pay any instalment upon his shares when required by the board, the corporation may recover from him the principal sum due, with interest thereon at the rate of ten per cent. per annum, by motion on ten days' notice, or by action before any justice or court having jurisdiction: W.Va. 53,28. Compare § 8112.

NOTE. — " Or any portion of them, designated by a majority of the whole number: Ore.

**§ 8033. Sale of Stock.** Before a corporation is organized, shares may be disposed of as prescribed by C. 54, § 16 (see below); or by the charter. After it is organized, the disposal of additional shares to increase (see § 8120) the capital stock shall be subject to the order and direction of the board of directors for the time being, so that the maximum capital be not exceeded: W.Va. 53,23.

A subscription to the stock of a corporation about to be formed, is to be held for the benefit of the corporation when it is formed, and may be enforced by it: Oka. 967.

If more than the amount necessary to make up the maximum capital or the amount of capital to be disposed of, be at any time subscribed, the subscriptions shall be reduced to the proper amount by deducting the excess from the largest subscription in such manner that no subscription shall be reduced while any one remains larger: W.Va. 53, 27.

After a certificate of incorporation has been issued pursuant to the ninth section (§ 8024), and before a board of directors have been elected or qualified, additional shares of the capital stock may be disposed of, so that the maximum capital be not exceeded, in such manner, on such terms, at such times and places, and under the superintendence of such persons as the corporation named in the agreement recited in such certificate, or those holding a majority of the shares, may appoint, but subject to the provisions of the twenty-third and the four following sections of chapter fifty-three of the code: W. Va. 54,16.

The directors may dispose of the residue of the capital stock at any time remaining unsubscribed in such manner as the by-laws may prescribe: Tex. 585.

When it appears to the commissioners at the place first named in the act, that so much of the capital stock is subscribed as is sufficient to incorporate the subscribers, the said commissioners shall give notice thereof by publication in a newspaper, for not less than two weeks, and call a general meeting of the subscribers at a certain time and place, which time shall not be less than fourteen nor more than thirty days from the first day of such publication. The subscribers, their executors, administrators, or assigns, shall stand incorporated from the time of such meeting, unless in said meeting it be determined otherwise: Va. 1112.

**§ 8034. First Meeting.** It may be held (1) at any time after all the capital stock has been subscribed for: Ill. 32,3; or "a sufficient amount to incorporate the subscribers:" Va. 1112. (2) At any time after one half of the capital stock has been subscribed: " N.Y. 1875,611,5; O. 3244; Wis. 1773; Ore. 3222; S.C. 1886,288,4; Ala.<sup>a</sup> <sup>b</sup> 1663; (3) any time after the articles have been duly filed and recorded: Vt. 3280; Minn. 134,123. After a certificate (§ 8025) is issued: W.Va. 54,15. (4) No time is specified: Ct. 1945; N.J. Corps. 22;



Ark. 963. So in others: Mass., Me., R.I., Ind., Mich., Del., N.C., Mo., Nev., Wash., Miss., Fla., N.M. See below.

Ten per cent of the stock must be paid ; see below and in § 8110: O. 3244.

The first meeting of a corporation organized under general laws which make no provisions for the calling thereof may be called in the manner set forth in the articles of association, or, if they make no provision, by a notice signed by a majority of the associates, and published in the manner prescribed below: Mass. 105,10; Fla. 34,10.

The first meeting of all corporations shall [unless otherwise provided for by the charter, articles, or general laws] be called <sup>b</sup> by a notice signed by three or more <sup>c</sup> members, setting forth the time, place, and (except in Vt.) purposes of the meeting; and shall, ten <sup>d</sup> days at least before the meeting, be delivered to each member,<sup>e</sup> or published<sup>e</sup> in some newspaper of the county where the corporation may be established; or, if none, then in some newspaper in this State<sup>f</sup> nearest thereto: Mass.<sup>c,d</sup> 105,9-10; Me.<sup>f</sup> 46,3; Vt.<sup>c,e</sup> 3280; R.I. ||| <sup>c,d</sup> 152,4; Ct.<sup>b,c,d,e</sup> 1945; N.J. Corps.<sup>c,d</sup> 22; O.<sup>b,c,d,e</sup> 3244; Ind. 3004; Ill.<sup>e</sup> 32,3; Mich.<sup>d</sup> 4862; Wis.<sup>b,c</sup> 1773; Minn. 3134; Del.<sup>c,d</sup> 70,3; & V. 17,147,18; Va.<sup>b,d,e</sup> 1112; W.Va.<sup>b,c,d,e</sup> 54,15; N.C. 665; Mo.<sup>c</sup> 2481; Ark.<sup>b,c,d,e</sup> 963; Ore.<sup>d,e,g</sup> 3226; Nev.<sup>g</sup> 809; Wash.<sup>c,g,d</sup> 2428; Miss.<sup>c</sup> 1031; N.M.<sup>c,g,f</sup> 199.

Five days' notice must be given by mail, stating the time, place, and object of such meeting: N.Y. So, ten days': Ill.

Said meeting may be held without such two weeks, or other notice, if all stockholders are present in person or by proxy: N.J., Del., Wis., Ore.; or consent thereto in writing: Ct., N.J., Del., Ark., Ore. Which waiver must be recorded upon the corporate books: Ct., Ark.

NOTES. — <sup>a</sup> "In good faith by subscribers of whose solvency the commissioners are satisfied:" Ala. <sup>b</sup> "At such time and place as they appoint:" Ala, Ct., O. Such time must be 14-30 days from first publication: Va.; 21-90 days from certificate: W.Va. <sup>c</sup> "One or more:" R.I., Del., N.C., Mo., Nev., Wash., Miss., N.M., Mich., Minn. "Any two:" Vt., Ct., Wis., Ark. "Any five:" O. "Any person named in the act:" Me. "A majority:" N.J., Mass., Fla., W. Va., Del. <sup>d</sup> Two days' personal service or two weeks' publication: N.J., Del., Ore. Twenty days: Mich., Minn., Wash. Two weeks: Va., W.Va. Seven days: R.I., Mass., Me., Mo. Fifteen days: Ct., Ark. Thirty: Ore. <sup>e</sup> No notice by publication provided for: Ill., Vt. So, no personal notice: Ct., Va., O. <sup>f</sup> In the State paper: Me., Minn. By posting: N.M. <sup>g</sup> The statute applies to the first meeting of the trustees or directors, not stockholders.

§ 8035. **Business of First Meeting.** Officers or directors must be elected at the first meeting (and see § 8053). Ct. 1946; O. 3240; Ill. 32,3; Ind. 3005; W.Va. 54,15; Dak. Civ. C. 406; Ida. 2593; S.C. 1886,288,4; Ala. 1663; Oka. 979.

An officer or person must be designated to receive subscriptions of stock: Ala. 1663.

By-laws must be adopted: Ct., W. Va., Dak., Oka.

Any other business of a general meeting may be transacted: Ind., W. Va.

Generally, the corporation must "proceed to organize:" Ill.; Miss. 1031.

The amount of the capital stock of every such corporation hereafter incorporated or organized shall be fixed and limited by the corporation at its first meeting, and the number and amount of the shares: N.H. 148,5.

The corporators present at such meeting shall be inspectors of the election, and certify who are elected directors, and appoint the time and place for their first meeting: Ore. 3223.

The commissioners (within ten days after the meeting: N.Y.) shall make a full report of their proceedings, including therein a copy of the notice provided in the fore-

going section, a copy of the subscription-list, and the names of the directors or managers elected, and their respective terms of office, which report shall be sworn to (by at least a majority of the commissioners: Ill.), and shall be filed in the office of the secretary of state: Ill. 32,4; N.Y. 1875,611,7.

§ 8036. **Lapse of Charter.** Unless, in most states, the company proceed to business (1) within two years after the certificate or license (§ 8025) issued, it is deemed revoked, and all proceedings thereunder void: Pa. Corps. 16; Ill. 32,4; N.C. 688; S.C. 1886,288,28; Ga. 1676; Ala. 1676; N.M. 212. Compare § 8341.

(2) Within five years thereafter: Kan. 23,41.

(3) Within one year from "the date of its incorporation:" N.Y. †† 1890,563,21; W.Va. 53,6; Neb. 1,16,129; Ore. 3232; Cal. 5358; Dak. Civ. C. 419; Ida. 2636; Oka. 994.

(4) Within three years after filing the articles (§ 8020): Tex. 605.

And it must within such period have paid up one fourth of its capital stock: Pa.

The charter of any private corporation hereafter granted shall be and become void unless (1) of a corporation created by special charter, if no time is limited therein, it shall be organized within two years from the passage of its act of incorporation: Mass. 105,8; R.I. 152,18; Va. 1141; N.C.; (2) said corporation shall be organized, and a certificate of such organization sworn to by the president or secretary, or, if there be no such officers, by an officer having custody of the records of such corporation, shall be filed in the office of the secretary of this state within two years from the date of the approval of its charter: Ct. 1910.

(3) So, of dividend-paying corporations, within three years of the passage of the act of incorporation: N.H. 149,2.

That the non-user, of any company incorporated in this state, of a part of its power, privileges, or franchises, shall not have the effect to forfeit or to affect any franchise, right, power, privilege, or immunity contained in its charter: Tenn. 1887,190,1.

§ 8037. **Abandonment of Business.** (See also §§ 8330,8341.) If a corporation shall suspend its operations (1) for two years, its corporate rights and privileges shall cease: Va. 1141; W.Va. 53,7; N.C. 688.

(2) So, if for six months: Ore. 3232.

So, non-user for two years of its franchise is a forfeiture: Io. 1079; Uta. 2284.

Five years: Ky. 56,12; S.C. 1886,288,18; Ala. 1676; Ariz. 243.

But such body shall not forfeit its franchises by reason of any omission to elect officers or to hold meetings at any time prescribed by the by-laws: Io.; Ky. 56,12; Ariz. 243. See also § 8051.

Provided such act be done within two years thereafter: Io.

Whenever powers, franchises, and privileges have so been granted to a corporation, and they are not used, or are assigned to others, in whole or in part, such corporation shall not be dissolved, unless all the corporate property has been appropriated to the payment of its debts: Tenn. 1719.

All existing charters or grants of special or exclusive privileges under which organizations shall not have taken place, or which shall not have been in operation within two years from August 22, 1872, shall have no validity or effect whatever. *Provided*, that nothing herein shall prevent the execution of any *bona fide* contract heretofore lawfully made in relation to any existing charter or grant in this state: W.Va. 53,4.

**Art. 804. Office and Officers.**

§ 8040. **Office.** In several states every corporation organized under the state laws must have (1) its principal office in the state: Wis. 1750; Kan. 23,31a; Tex. 597.

See also § 8010: Md.

(2) Shall have a "place of business within the state:" R.I. 152,16; Ala. 1889,88; so, its "domicil:" La. D. 740.

*Except* (and see Title II.) railroads owning lines also in other states: Wis.

Every corporation organized or holding property in the state (3) shall keep a stock-book and transfer office in the state: R.I. 152,15; Mich. 4900; Wis. See also § 8156.

"Corporations shall keep, at some place within the state, a clerk's office:" Me. 46,10; Vt. 3267; N.H. 148,8.

They "shall have a clerk, treasurer, or other agent, who shall reside therein:" R.I., Ala.

So, the clerk must reside in the state: N.H., Me., Ark. 966. The transfer agent: R.I. So, "its principal managing officer or superintendent:" Wis. The treasurer: Ark.

(4) Every company incorporated under the laws of this state or another state, and doing business in this state, except an insurance company incorporated under the laws of another state, shall have an office in the state at which all claims due residents of the state against such company may be audited, settled, and paid: Va. 1104.

(5) When a majority of the stock of any corporation is held or owned in any other state or territory, its principal office may be in such other state or territory, and the meetings of stockholders or directors be held there; *provided*, that it shall establish a principal place of business and designate an agent for receiving process in this territory, as in the case of foreign corporations: N.M. 230.

The directors may hold their meetings, and have an office, and keep the books of the company (except the stock and transfer books: N.J., Del.) outside of this state, if the by-laws of the company so provide; *provided, however*, that said company shall always maintain a principal office or place of business in this state, and have an agent of the company in charge thereof: N.J. Corps. 50; Ala. 1889,88; Del. Therein shall be kept the stock and transfer books of the company for the inspection of all who are authorized to see the same, and for the transfer of the stock; *and provided, further*, that the chancellor of the supreme court (superior: Del.), or any justice thereof, may, upon proper cause shown, summarily order any or all of the books of said company to be forthwith brought within this state, and be kept therein at such place as may be designated for such time as such chancellor, court, or judge may deem proper, and upon failure of any company to comply with such order, its charter may be declared forfeited by the chancellor or said court, and it shall therefrom cease to be a corporation, and all the directors and officers of said company shall be liable to be punished as for contempt of court for disobedience to such order: N.J. Corp. 50; Del. V. 17,147,27.

See also § 8050.

Where any company has been incorporated under the laws of this state, and a majority of the directors, corporators, or stockholders thereof are citizens of any other state, said corporation may be organized, and all the meetings of such corporators, directors, or stockholders held in such place, whether in this state or elsewhere, as such majority may from time to time appoint; *provided*, however, that the annual election for officers of such corporation shall be held in the state: Pa. Corps. 78.

If any dividend paying corporation has no place of business in this state, all lists, transfers, certificates, and other papers, required by law to be filed or recorded in the town clerk's office, shall be so filed or recorded in the clerk's office of the town in this state nearest to the principal place of business of the corporation: N.H. 149,10.

And certified copies of proceedings of meetings held out of the state (see § 8050) must be deposited with the agent therein within thirty days : Ala. 1889,88.

And there, also, must be the office of the superintendent, the general manager or director, the secretary, the auditor, the treasurer, the paymaster, and the general freight or ticket agent : Kan. 23,31a.

Six months failure to comply with any provision of this section has effect as a forfeiture of the charter : Kan. 23,31b.

And furthermore, all corporations or joint-stock companies incorporated in the state must keep the treasurer's or general financial office within it, and also their earnings and profits until disbursed or divided : Kan. 23,36.

NOTE. — <sup>a</sup> Except mining companies in the upper peninsula.

§ 8041. **Agent for Service of Process.** The clerk of a corporation, within twenty days after acceptance of the office, shall file a certificate of his election in the registry of deeds in the district where the corporation is established, or where it has a place of business, or a general agent ; and an attested copy of such certificate shall be sufficient evidence that he is clerk, for service of process upon the corporation, until another certificate has been filed : Me. 46,11. See § 8301.

Every corporation having its office or principal place of business in this state shall, within thirty days after organization, appoint by power of attorney some person, residing in the county where its business is conducted, to accept service on process on behalf of said corporation : W.Va. 54,24.

Any corporation failing so to do is liable to penalty : W.Va. 54,24.

§ 8042. **Books.** It is often provided that (A) books of account must be kept at such principal place of business of the corporation : Ct. 17,1,19 ; N.Y. 1890,564,29 ; Ill. 32,13 ; Wis. ; Ark. 974 ; Col.† 249.

At such office must be kept (1) the principal books of account : Ill. 32,13 ; Wis. ; Kan. 23,31a ; (2) the stock-books (see § 8156) : Me., Wis.

(3) "Their records and books : " Me. 46,10 ; Ct. 1953 ; Kan.

So, the secretary must record all votes of the company and the directors : N.J. Corps. 18.

"They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions : " Kan. 23,23 ; Tex. 586. See, also, § 8156.

The president and directors shall keep full, fair, and correct accounts of their transactions : Md. 23,5 ; W.Va. 53,52.

"The board shall cause regular books of accounts to be kept and balanced (1) annually or semiannually : " Va. 1121 ; (2) at least once every six months : W.Va. 53,54.

A private corporation shall, by its clerk, keep a record of its corporate action, in which the shares of the capital stock of the corporation shall be designated by numbers, and also a record of the name of each owner of stock, and the number and description of the shares of such owner : Vt. 3270.

It shall be the duty of the corporation to keep true and correct books of its proceedings and business : Uta. 2279.

Every corporation shall keep a correct and complete record of all its proceedings, including such as relate to the election of its officers, and such record may be kept in any other than the English language, when so provided in its articles of organization. If any officer, agent, or servant of any corporation shall omit to make any entry in the books or records thereof, which it is his duty to make as such officer, agent, or servant, he shall forfeit not less than twenty-five nor more than one thousand dollars, and be liable for all damages thereby sustained : Wis. 1759.

All corporations for profit are required to keep a record of all their business transactions, — a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder to any action or proposed action must be entered in full; all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation: Cal. 5377; Dak. Civ. C. 417; Ida. 2639; Oka. 992.

The laws of most states provide that the books of every corporation containing the stock subscriptions and accounts (the "records and books:" N.H., Me., Ct., Minn., Kan., Tex., Oka., S.C., Ala.; "the by-laws and records:" Vt.; "the records and files:" N.H.; "the statements and books:" Ark., Col.; "the accounts of their transactions:" Md., Wis., Ida.; the stock-books (and see § 8156): N.H., Wis.; "all books, papers, correspondence, and funds:" Va., W.Va.; original papers and evidences of debt: N.H.; "its accounts:" Vt., N.Y.) shall be at all reasonable times open to the inspection of (1) the stockholders: N.H. 148,10; Vt. 3268,3295; 1884,105; Ct. 1953; N.Y. 1890,564,29; Wis. 1757,1759; Minn. 2644; Ill. 32.13; Kan. 23,23; Md. 23,5; Va. 1121; Ark. 974; Tex. 586; Col.† 249; Ida. 2639; S.C. 1886,288,17; Ala. 1677.

(2) Of "persons interested:" Me. 46,10.

(3) Of creditors: N.Y., N.H., Wis., Ida.

(4) Of the board of directors or a committee thereof: Va. 1121; W.Va., 53,47. Or their attorneys respectively: N.H., Ill., N.Y.

(5) Of any committee appointed for the purpose at a general meeting of stockholders: W.Va.

(6) Such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same: Minn. 34,8; Ore. 3228.

All accounts and minutes of business of the corporation kept by its treasurer or by any officer or agent thereof, all records of certificates and transfers of shares, all original certificates and transfers on file, and original papers and evidences of debts due to such corporation, shall be subject to the inspection of every member and stockholder, and of every creditor thereof whose demand is due and unpaid, so far as they have any relation to the claim of such creditor: N.H. 147.11.

The clerk, treasurer, or other officer or agent of any corporation, having the keeping of any such record, account, or paper, when required by any member or stockholder, or by any such creditor, on payment or tender of the like fees as are by law allowed to clerks of court for such service, shall furnish a certified copy of any vote, record, or account, and of any original paper which such party is entitled to inspect: N.H. 147,12.

If any clerk, treasurer, officer, or agent of any corporation, after demand of such copy and payment or tender of the fees therefor, shall neglect or refuse for seven days to furnish such copy, he shall forfeit for every such offence a sum not exceeding one thousand dollars to any member, stockholder, or creditor who shall have demanded such copy: N.H. 147,13.

Such stockholders or other persons "may take copies and minutes therefrom of such parts as concern their interest, and have them produced in court when they can be used as evidence in the trial of actions:" Me.

The clerk must give certified copies for a reasonable charge : Vt. 3268.

So any stockholder or creditor may demand a certified copy from the officer in charge of the stock-book, or any other paper on file in the office : Nev. 817.

He may "make extracts:" N.Y., Col.†

Or "take copies:" Col.†

Every creditor of a corporation may require the officers to furnish him information of the amount of capital stock subscribed and paid in, the names, number of shares, and amount unpaid for the shares of all the stockholders; and, if any shares of stock not fully paid have been transferred within six months, the name of the transferrer, and amount due thereon : Wis. 1757.

**Penalty.** Any officer or member of a corporation who refuses information or prevents access to and use of the records and books, as provided, is liable (1) for all damages occasioned thereby, in an action on the case : Me. 46,19; Wis. 1757; (2) for a misdemeanor, under penalty : Col.†† 249; Vt. 3269,3295; N.Y. 1890,564,29; Mo. 2504.

The secretary and every person having charge of the stock-books of every corporation shall give, upon the application of any person claiming to be, or to be the attorney of, a creditor of any stockholder, information as to the names of the stockholders and number of shares owned by them respectively; and any secretary refusing to give such information shall forfeit one hundred dollars to him who shall prosecute therefor : Ct. 1939. Compare Art. 814.

If the clerk or other officer having charge of such [stock-] book make any false entry or neglect to make any proper entry, or, having charge of any papers of the company, refuse or neglect to exhibit the same or allow it to be inspected or extracts made, or to give a certified copy as above provided, he is guilty of a misdemeanor, subjected to a penalty to the party injured, and is also liable for all damages resulting therefrom : Nev. 818; Wash. 2437. Compare § 8235.

Upon such demand being made in writing, every such officer, clerk, cashier, or agent shall be bound to produce such books, accounts, and papers to such stockholder, and afford due opportunity to examine and inspect the same; and such stockholder shall have the right to take copies or make extracts therefrom, but shall not remove from the office of the corporation any such books, accounts, and papers : Col. 249.

NOTE. — <sup>a</sup>I. e. at the clerk's office : Me.

§ 8043. **Directors.** Every corporation has (in all the states) managers, trustees, or directors (**A**), not less than three : N.H.<sup>a</sup> 148,4; Vt. 3283; Ct. 1950; N.Y. 1890,23; N.J. Corps. 17,1889,265; Pa. Corps. 23; Wis. 1772; Minn. 34,124; Kan. 23,11; Del. V. 17,147,17; Mo. 706; Ark. 964; Tex. 575; Ore. 3222; Nev. 806; Col. 242; Dak. Civ. C. 407; Mon. 450; Wy. 505; Uta. 2273; S.C. 1886,288,4; Ala. 1663; N.M. 196; D.C. 555; Oka. 981.

Not less than two : Wash. 2425.

Not less than five : Pa. Corps. 86; O. 3240; Ill. 32,50; Tenn. 1706; Cal. 5305; Ida. 2592.

Not less than four : Md. 23,57.

(**B**) Nor more than nine : Mon., Wy., S.C., Ala., D.C.

Not more than eleven : Ill., Cal., Dak., Ida., Oka.

Not more than twelve : Md.

Not more than thirteen : N.Y.; Mo.; Tex.; Col.; Uta. 1890,45.

Fifteen : Pa. Corps. 86; O. 3244; D.C. 1889,169 (U.S.).

The number is fixed by by-law. Otherwise, there are five besides the president : Va. 1118. Five, counting the president : W.Va. 53,49. Not more than twenty-four : Kan.

The directors are annually (except the first year: Col.) elected in the manner provided by the by-laws: Vt. 3283; N.Y. 1875,611,6; 1890,564,20; Ct.; Pa.; N.J.; Wis. 1776; Minn.; Kan. 23,17; Md.; Del.; Ark.; Tex. 579; Cal. 5302; Nev.; Col.; Wash.; Dak. Civ. C. 406; Ida. 2589; Mon.; Wy.; N.M.; D.C. By a majority of the votes cast: N.Y., O., Tenn. By "the greatest number:" Md., Cal., Nev., Col., Wash., Mon., Wy., N.M., D.C.

By a majority of all the stock: Dak.; Ida. 2594.

So, they are to be chosen annually by the stockholders: N.H.; Ct.; N.J.; O.; Mich.<sup>a</sup> 4085; Wis.; Del.; Va.; W.Va. 53,49; Ark.; Cal.; Ore. 3227; Dak. Civ. C. 406; Ida. 2589; S.C.; Ala. 1665; Oka. 978.

So, annually or biennially: Tenn. 1705,1706.

They hold office for one year, and until others are chosen and qualified: N.H.; Vt.; N.Y.; N.J.; Pa.; O.; Wis.; Del.; Va.; W.Va.; Ark.; Ore.; Nev. 807; Col.; Dak.; S.C.; Uta. 2277; Ala.

It shall be lawful for any such corporation, by resolution of the stockholders, to divide its board of directors or managers into three (five: N.J.) classes, numbered consecutively, the term of office of the first class to expire on the day of the annual election of said company then next ensuing, the second class one year thereafter, and the third class two years thereafter, etc. At each annual election after such classification the stockholders of such company shall elect, for a term of three years (not more than five nor less than one: N.J.), a number of directors or managers equal to the number in the class whose term expires on the day of such election: Ill. 32,3; Wis. 1772; Pa. 1885,274,1; N.J. 1889,265; Minn. 3127; Va. 1888,373.

There may be two, three, or four such classes: Pa.

The officers and directors of any such company, after the first year, shall be such as may be prescribed by its by-laws, and shall be appointed or removed as the said by-laws may provide: Va. 1147.

Directors or trustees must be chosen at one time on a general ticket: Mich., Mon. G. L. 450.

See, for cumulative voting, § 8053.

*The first board* of directors shall consist of the five or more incorporators who obtained the charter: Tenn. 1706.

At the time and place appointed directors shall be chosen, by ballot, by the stockholders who attend for that purpose, either in person or by lawful proxies; each share shall entitle the owner to as many votes as there are directors to be elected, and a plurality of votes shall be necessary for a choice, but no person shall vote on any share on which any instalment is due and unpaid; and the subscribers of the articles of incorporation, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting: O. 3245.

At the first meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified: Cal. 5306; Dak. Civ. C. 406; Ida. 2593.

If the number of the board be reduced at any time so as to interrupt the proper and efficient management of the business of the corporation, a general meeting of the stockholders may be called to elect new directors, or to take such order in the premises as they may deem proper: W.Va. 53,49.

Their number cannot be increased nor diminished without the consent of a majority of the stock: Pa. Corps. 86; Ill.; Kan. 23,11.

Nor, without such consent, can their term of office be altered: Ill. See also § 8091.

§ 8044. **Other Officers.** (A) The directors choose one of their number to be president: Ct. 1950; Vt. 3284; N.Y. 1890,564,27; O. 3247; Wis. 1776; W. Va. 53,50; Tex. 580; Col. 244; Ida. 2595; Mon. G. L. 452; Wy. 507; S.C. 1886,288,4; Ark. 966; Mo. 2491; Cal. 5308; Dak. Civ. C. 408; Kan. 23,18; Ore. 3225; D.C. 558; Oka. 982.

So in others, but he need not be one of their own number: Kan. 23,18.

(B) The president is elected by the stockholders at the annual meeting, except where otherwise provided: Va. 1118.

One of the directors is elected president, by the corporation or by the directors, as the by-laws prescribe: N.H. 149,4; N.J. Corps. 17; 1889,265; Pa. Corps. 23; Md. 23,54; Del. V. 17,117,17.

So, respectively, of the secretary and treasurer: N.J. Corps. 18; N.Y.; Del.; Cal. Who may be the same person: Del.

The directors appoint (1) the treasurer: Ct., Vt., N.Y., O., Kan., Va., Mo., Ark., Tex., Cal., Ida., Dak., Oka.

(2) The secretary: Ct., Vt., N.Y., O., Kan., Mo., Tex., Ark., Ore., Ida., S.C., Cal., Dak., Oka.

(3) Such other officers as the by-laws prescribe: Ct., N.Y., N.J., Pa., Wis., Mo., Tex., Ark., Col., Wy., D.C., Mon., Ala.

Or as the directors determine: N.Y.; Ill. 32,6; Del.; Va. 1120; W.Va. 53,53; Tex.; S.C.

The above officers hold their offices until others are chosen in their stead: Ct.; N.J.; Ark.; Uta. 2277; Del. So. all officers: Ky. p. 769, § 4.

They may be removed at pleasure by the directors: N.Y., W.Va., S.C.

All other officers are chosen and hold office as the by-laws direct: N.J. Corps. 19; Pa.; Ill. 32,6; Md.; Mon.; Wy.; S.C.

Every company must have a secretary or clerk: N.H. 147,8; N.Y. 1875,611,6; N.J. Corps. 16; Pa.; Ill.; Tenn.

A treasurer: Vt. 3271; N.Y.; N.J.; Pa.; Ill.; Tenn. 1701.

A cashier or treasurer: Va. 1120.

A president: N.Y., Ill.

“Elected by and among the directors:” N.Y.

The officers and agents so appointed hold office (1) during the pleasure of the board: W.Va. 53,53.

(2) As prescribed by the by-laws: S.C. 1886,288,4.

(3) For one year: S.C. ib. 12.

All moneyed corporations, except as otherwise provided by law, shall, at the first election of officers, elect a treasurer of the corporation, and shall keep up the office of treasurer in such corporation. Such treasurer shall receive the money deposited or put in trust with such moneyed corporation: Vt. 3271.

The clerk must be chosen annually by the stockholders, or in such other manner as the by-laws prescribe: N.H. 148,8.

He holds office for one year, or until his successor is chosen and qualified: N.H.

He must be sworn to the faithful discharge of his duties: N.H., Pa.

In a case of vacancy, a clerk must forthwith be appointed by the president, or a majority of the directors: N.H.

The clerk must record (1) all votes of the corporation: N.Y., Pa., Del.

(2) Minutes of all its transactions: N.Y., Pa., Del. See also §§ 8042,8061.

§ 8045. **Qualifications.** All the directors must be *bona fide* stockholders: Vt. 3283,3252; Ct. 1950; N.Y. 1890,564,20; N.J. Corps. 16 & 47,48; O. 3248; Wis. 1776; Del.<sup>f</sup>; Minn. 2659; W.Va.<sup>e</sup> 53,49; Ark. 964; Cal. 5305; Ore. 3224;



Nev. 806 ; Col. 242 ; Wash. 2425 ; Dak. Civ. C. 407 ; Ida. 2592 ; Mon. G. L. 450 ; Wy. 505 ; Uta. 2272 ; S.C. 1886,288,4 ; N.M. 196 ; D.C. 555 ; Oka. 981.

At least five shares : N.Y. In an amount to be fixed by the by-laws : N.J., O., Ore., Cal.,<sup>c</sup> Dak.,<sup>c</sup> Ida., Oka.

So, of the other officers of the corporation : O.

So, of the president : Vt.<sup>c</sup> 3252.

Of the secretary and the treasurer : N.Y. 1890,564,27.

One of the directors must be a citizen in the state : N.H. 148,3 ; Vt. 3283.

So, three of them : Kan.<sup>a</sup> 23,31a.

So, a majority must be citizens : N.Y. 1890,564,20 ; Pa. Corps. 86 ; O. 3248 ; Md. 23,57 ; Cal. ; Wash. ;<sup>a</sup> Ida. ;<sup>a</sup> D.C.

One third : Pa. 1885,166 ; Uta. ;<sup>a</sup> N.M. ; Oka.<sup>b</sup> 952.

So all of them : W.Va.,<sup>c</sup> Ore.<sup>a</sup>

They must all be citizens of the United States, or residents intending to become such : Md.

So, a majority : Wash., N.M.

The principal managing officer, or superintendent, must reside in the state : Wis. 1750.

So, the secretary : Ct., Ark.

The treasurer : Ct., Ark.

The clerk : Me. 46,10 ; 1889,263 ; Vt.

Provided, that if the assistant treasurer reside in the state it is enough : Ct.

When any person, a director of any body corporate, shall cease to be a *bona fide* holder of some of the stock thereof, he shall cease thereupon to be a director thereof : N.Y. ; N.J. Corps. 48 ; Ore.

So, when he ceases to be a resident of the state : Ore.

One third of the officers of such corporation shall be residents of this territory : Dak. 381.

Provided, that railroad companies, canal or flume companies, mining companies, and companies for publishing newspapers or conducting institutions of learning in the state, may permit a minority of the board of directors to reside out of the state : Ore. 3224.

That it shall not be necessary for any of the directors of any water or manufacturing company heretofore or which may be hereafter organized under the act to which this is a further supplement, or any other act, general or special, or in pursuance of any special charter, to reside in any specified township or city in this state, although it may be so required by any such special act or special charter ; neither shall it be necessary to limit the number of directors of any such company so organized or which may be so organized under any of such acts or under any such special charter, to the number named therein or in any of them ; *provided*, that the directors of any such company shall not be less than three in number ; *provided*, that a majority of the directors of any such company shall be residents of this state : N.J. Supp. Corps. 92.

Any one of the directors or executive officers of any corporation, incorporated by the laws of this state, owning stock in any of the banks or other corporations of the state, shall be eligible to be elected as a director of such banks or other corporations, at any meeting of stockholders of such banks or other corporations, legally convened for the election of directors, and upon such election may act as director of such bank or other corporation ; *provided, however*, that not more than one single person of such directors or executive officers shall be eligible to serve as such director at the same time : Ct. 1922.

In any corporation a director may be vice-president, treasurer, solicitor, or other officer, and receive a salary therefor, anything in the general law notwithstanding : Pa. 1891,52 & 77.

NOTES. — <sup>a</sup> And be also resident. <sup>b</sup> Read "citizens," not "resident." <sup>c</sup> If it be not otherwise provided. <sup>d</sup> This, perhaps, does not apply to corporations created by special act. See § 8004. <sup>e</sup> In corporations for profit only. <sup>f</sup> See also § 8043 for citations.

§ 8046. **Oath or Bond.** Every director must, before taking office, make oath faithfully to discharge his duties: O. 3247; Kan. 23,18; Ore. 3224; Nev. 806; Wash. 2425; Uta. 2270.

So, the secretary: N.J. Corps. 18; Pa.

So, all officers: Uta.

That "they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the association with intent to defraud any stockholder or creditor or the public:" Uta.

The treasurer must give bond in sum and sureties as required by the by-laws: N.Y. 1890,23; N.J. Corps. 23; Pa.; S.C. 1886,288,23.

He shall keep the moneys of the corporation in a separate bank account, to his credit as treasurer: Pa.

All officers appointed by the directors must give bond with such conditions as the directors require, and such sureties as they approve: N.Y. 1890,564,27; Del.; Va. 1120; W.Va. 53,53.

If so required by the by-laws (and see § 8071): Md. 23,54; Col. 244; Mon. G. L. 452; Wy. 507; D.C. 558.

The directors or managers may require of the officers and agents bonds, with such sureties and conditions as they shall deem proper: Ill. 32,6.

If a majority of any newly-elected board of trustees fail to qualify within thirty days, any officers of the company must call a meeting upon request of one third of the stock of elected trustees, and replace those who have failed to qualify; but, if no such meeting is called, such trustees may qualify at any time after such thirty days: Nev. 807.

§ 8047. **Salaries.** There shall be no compensation for services rendered by the president or any director unless it be allowed by the stockholders: Va. 1119; W.Va. 53,53.

The compensation of other officers is fixed by the directors: Va. 1120; W.Va. 53,53.

No officer shall receive a salary unless voted by the board of directors: Vt. 1884, 105,3.

§ 8048. **Removal and Vacancies.** Vacancies in the board of directors may be filled for the unexpired term (1) by appointment of the board: Vt. 3285; Pa. Corps. 27; O.<sup>a</sup> 3248; Wis. 1776; Kan. 23,17; Va.<sup>b</sup> 1119; W.Va.<sup>b</sup> 53,49; Tenn. 1706; Tex. 579; Cal.<sup>a</sup> 5305; Nev.<sup>b</sup> 806; Wash.<sup>b</sup> 2425; S.C. ib. 12; Ala. 1665; Dak.<sup>a</sup> Civ. C. 407; Ida.<sup>a</sup> 2592; Oka.<sup>a</sup> 981.

So, "for the current year:" Ct. 1950; Ark. 967.

(2) All vacancies are to be filled as the by-laws direct: N.Y. 1875,611,26; 1890,564,20; N.J. Corps. 20; Ill. 32,3; Md. 23,59; Del. V. 17,147,17; Col. 242; Mon. G. L. 450; Wy. 505; N.M.; D.C. 556.

(3) By the stockholders, or other appointing power: Va. 1118.

During the absence of the president, the directors may appoint a president *pro tempore*: Va. 1119; W.Va. 53,50.

The directors may fill a vacancy in the office of president: Pa., Va.<sup>b</sup>

Or treasurer: Pa.

Or any officer: Pa.

**Removal.** At any general meeting of the stockholders, called as provided for in § 8050, any director or directors of said corporation may, by a vote of a majority in interest of the whole number of stockholders, be removed from office, and another or others be appointed in the place of the person or persons so removed to serve for the remainder of his or their term: Md. 23,7; Va. 1118; W. Va. 53,49.

So, the president: Md.

Whenever the office of trustee in any incorporated company may have, or shall hereafter, become vacant by death, resignation, or otherwise, and the same for any cause cannot be filled under the provisions of the charter of incorporation, the judge of the superior courts of the counties or judicial districts in which said incorporation may be situated, shall have power to fill such vacancies upon petition to said judge of said courts, showing the circumstances which render the appointment of a trustee or trustees necessary and proper: Ga. 2321.

**California Code Provisions.** No director shall be removed from office unless by a vote of two thirds of the members, or of stockholders holding two thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in § 8050, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting: Cal. 5310; Dak. Civ. C. 410; Ida. 2597; Oka. 985.

"The directors may remove the president or any officer at pleasure, or when the interests of the corporation shall require:" Ill. 32,6; S.C. 1886,288,12.

No trustee shall be removed from office unless by a vote of (1) a majority of the stockholders as hereinafter provided: Nev. 805.

(2) Of two thirds: Wash. 2424,2425.

All other officers hold during the pleasure of the directors: Va. 1120.

The removal of directors is made on petition of a majority of the stockholders to the district judge; whereupon he calls a meeting, after published notice for five days. The judge appoints a secretary, and has summary decision of the conduct of the meeting. If less than one half the stock is represented in person or by proxy, the meeting is dissolved; but if more than one half the stock is represented, such majority may vote for the removal of one or more of the officers of the company. Tellers are appointed by the judge, and the vote is by ballot; and the judge issues a certificate of election to the officers chosen, and annexes to the petition a report of the proceedings: Nev. 806.

Two thirds of the stockholders may expel any trustee from office, and elect another to succeed him. Such notice shall be given of the meeting as the by-laws of the company may require: Wash. 2425.

A director may be removed by a two-thirds vote of all the directors: N.M. 195.

The directors, trustees, or other officers may be removed from office for misconduct in the manner prescribed by the agreement of incorporation or the by-laws: Uta. 1890,45.

NOTE. — <sup>a</sup>Unless the by-laws otherwise provide. <sup>b</sup>Only if the vacancy occur otherwise than by removal.

## Art. 805. Elections and Meetings.

§ 8050. **Annual Election.** All corporations are generally required to hold an annual meeting<sup>a</sup> at a time to be fixed by the by-laws: O. 3246; Wis. 1762; Kan. 23,17; Md. 23,57; Del. 70,2; V. 17,148,23; Va. 1113; W.Va. 53,41; Mo. 2505; Tex. 579; Cal.<sup>a</sup> 5301; Nev. 806; Col. 242; Dak.<sup>a</sup> Civ. C. 406; Ida.<sup>a</sup>

2589; Mon.<sup>a</sup> G. L. 450; S.C. 1886,288,11; Ala. 1666,1681; Fla. 34,10; Oka.<sup>a</sup> 978.

Or "by-law:" Va.

And at a place to be fixed (1) by the directors: Va.

(2) By the by-laws. If none, at the principal office: Del. V. 17,147,27; W.Va. 53,18; S.C.

And, if no such time is fixed, on the first Monday in January: O., Wis.

The second Monday in January: Mo.

On the fourth Tuesday in January: W.Va.

On the first Tuesday in June: Cal., Dak., Ida., Oka.

Any corporation, at any legal meeting, may alter the time of holding its annual meeting: N.H. 118,14; Pa. 1885,166.

So, but by vote of two thirds of the stockholders only: N.J. Supp. Corps. 4.

Of annual meetings there must be ten days' notice by advertisement in a paper in or near the principal office: N.Y.; Md.;<sup>b</sup> Mo. 2484; Col.<sup>a</sup> 242; Mon.<sup>a</sup> G. L. 450; Wy.<sup>a</sup> 505.

So, two weeks: Va.;<sup>b</sup> W.Va.;<sup>b</sup> Fla.; Dak. Civ. C. 406; Ida. 2589; Cal. 5302. Four weeks: N.Y. 1890,564,20.

Thirty days: D.C. 556.

As the by-laws direct: Del.; Cal. 5303, amt.; Nev.; Uta. 2285; S.C.; Ala.

Or by personal notice: Mo., Fla.

All meetings or elections both of stockholders and directors must be held at the place of business or domicile of the corporation: N.J. Corps. 50; Cal. 5319; Dak. Civ. C. 412; Ida. 2606; La. D. 741; Oka. 987; and any such meeting held elsewhere and any business transacted at any meeting held elsewhere is unlawful and of no effect: La. And so, probably, in the other states. But see also § 8040.

The stockholders or directors of any corporation formed under or accepting the provisions of this chapter may hold meetings for the transaction of the lawful business of the corporation (including the first general meeting for purposes of organization: W. Va.) out of this state, and may keep their principal office in any state or territory of the United States, or in the District of Columbia: W.Va. 54,23; Ala. 1889,88; but no meeting shall be held out of this state without the concurrence of persons holding (1) a majority in value of the stock of the company, nor without reasonable notice: W.Va.

(2) All the stockholders resident in the state must consent in writing: Ala.

The members of any corporation now or hereafter organized under the provisions of this chapter, and the directors and managers thereof, may meet and transact business without the state the same as within the state: Minn. 3127. Compare § 8044.

NOTES. — <sup>a</sup> "An election"; i. e. of all elections. <sup>b</sup> Unless the by-laws prescribe otherwise.

§ 8051. **Failure to hold Elections.** In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation formed under the provisions of this act, such corporation shall not, for that reason, be deemed to be dissolved: N.Y. 1890,563,18; N.J. Corps. 46; Ill. 32,14; Ia. 1079; Minn. 3127; Kan. 23,21; Md. 23,60; Del. V. 17,147,17; Ky. 56,12; Tenn. 1705; Mo. 24,89; Ark. 965; Tex. 583; Nev. 897; Col. 243; Wash. 2426; Mon. G. L. 451; Wy. 506; S.C. 1886,288,13; Ala. 1679; N.M. 197; D.C. 557. But it shall be lawful on any other day (within two years: Ia.; one year: Ark.) to hold a meeting, and elect its directors or trustees in such manner as shall be prescribed by the by-laws thereof: N.Y., Kan., Md., Ark., Tex., Nev., Wash., Mon., Wy., N.M., D.C.

So, such other meeting may be called (1) by the directors or any two stockholders, giving notice as in § 8050 : Col. 1885, p. 149.

(2) By the president : S.C.

The validity of any act of incorporation shall not be impaired by a failure to hold an annual meeting for the election of officers, or a failure to elect officers at the time prescribed by the charter or by-laws of the corporation ; but such election may be held at a subsequent meeting of the stockholders duly notified for that purpose : R.I. 152,7 ; Ala. 1681.

When a corporation fails to hold its annual meeting on the day appointed, the officers of the preceding year continue in the exercise of their duties, and their acts are legal until other officers are chosen and qualified in their stead : Me. 46,8 ; Ct. 1920 ; N.Y. ; Wis. 1762 ; Minn. ; Md. 23,60 ; Tenn. 1705 ; Nev. 807 ; Wash. 2426 ; Mon. G. L. 451 ; Wyo. ; Ala. ; N.M. ; D.C.

Unless the charter or by-laws otherwise provide : Ct.

When, upon due notice given, officers are regularly elected on any other day than that of the annual meeting, they shall hold their offices and perform their duties as if chosen on that day, unless a majority of the corporate members file with the clerk, within six months after such election, written objections thereto ; and their acts shall be considered legal until others are chosen and qualified in their stead : Me.

When such a notice is filed, the clerk shall call a meeting of the corporation at such time and place as he appoints, and give the notice required for an annual meeting, stating in it the fact that objections have been filed, and the purpose of the meeting ; and officers elected at such meeting shall hold their offices, and their acts shall be considered legal, until other officers are chosen and qualified in their stead : Me. 46,9.

And in such case a special or annual meeting may be called by its president or vice-president, or a majority of its directors ; and on their refusal, by one fourth of the associated proprietors, or the holders of one third of the capital stock if not less than one fourth in number of the stockholders, by a writing designating the time and place, and giving such notice as is required in calling an annual meeting ; and at such meeting the necessary officers may be elected ; and in such case such failure shall not impair the rights of said corporation or association (and see above) : Ct. 1920.

"Such elections may be held at any time after proper notice : " Ill. 32,14.

So, at any time within a year : Ark. 965.

Nothing in the preceding section shall at any time revive any corporation whose powers may have expired for any other cause than that hereinbefore named, nor any corporation which shall have in fact abandoned and ceased to exercise the powers and franchises granted by its charter : Ct. 1921.

In New York a special remedy is provided to protect stockholders when the directors fail to adopt by-laws enabling them to hold the annual election, and so hold over ; and their contracts for the company when so holding over are void : N.Y. 1890,564,22 & 53.

And a meeting may be called by any stockholder, giving the usual notice, and by-laws adopted at such meeting : N.Y. 1890,564,53.

If an election for directors in any such corporation shall not be held on the day appointed by law, it shall be the duty of the directors to notify, and cause such election to be held, within sixty days<sup>a</sup> after the day so appointed ; and on the day so notified no person shall be admitted to vote except those who would have been entitled had the election taken place on the day when by law it ought to have been held : N.Y. 1890,564,55 ; N.J. Corps. 46 ; Mo. 2488 ; Del. V. 17,147,25.

If from any cause an election does not take place on the day appointed in the by-laws, (1) it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as

provided in [ §§ 8050-8052 ] : Cal. 5311 ; Dak. Civ. C. 412 ; Ida. 2601 ; Uta. 2278 ; Oka. 987.

(2) They may be chosen at a members' or stockholders' meeting, at which all the members or stockholders are present in person or by proxies, or at a meeting called by the trustees or directors, or any two members or stockholders, notice of which has been given in writing to each stockholder, or by publication in some newspaper printed in the county where the corporation is situate, or has its principal office, for ten days ; and trustees and directors shall continue in office until their successors are elected and qualified : O. 3246 ; Col. 1885, p. 149.

But any justice of the supreme court may summarily order such election to be held upon the application of any stockholder, and punish the directors as for a contempt of court for any neglect or failure to obey the order of such justice in reference to such election : N. J. Corps. 46 ; Del.

If any corporation shall fail to hold its annual meeting, or if from any cause at any time a meeting thereof cannot otherwise be called, the owners of one twentieth part of the stock or property thereof, or, if the same is not divided into shares, one twentieth part in number of the members thereof, may apply in writing to any justice of the peace, stating the occasion and purpose of such meeting to call a meeting of the members of such corporation : N.H. 148,15.

Such justice shall thereupon issue his warrant to one of the applicants, requiring him to warn such meeting, at a suitable time and place, for the purpose stated in the application, by publishing a copy of the application and warrant ; and all business transacted at such meeting in pursuance of such warrant shall be valid : N.H. 148,16.

That if, at any time hereafter, the election for directors of any incorporated company of this state shall not be duly held on the day designated by the by-laws of such company, it shall be the duty of the secretary of such corporation, on the written request of five stockholders, and in mutual insurance companies on like request of five policy holders, to call a meeting of the stockholders or policy holders of such company for the purpose of electing directors ; said call to be made in the same manner as required by the charter or by-laws of such company for the regular election of directors thereof : N.J. Corps. 107.

Whenever any company, association, or society heretofore or hereafter incorporated shall have failed to elect its officers at the time designated, it shall be lawful for any such company, association, or society to call a meeting and elect its officers, who shall hold the respective offices until the time specified for the annual or other fixed time for holding such election ; and when any incorporated company heretofore organized, or that may be hereafter organized under the provisions of this chapter, shall have a specified time fixed for its annual meeting, a majority of the stockholders in interest may, at any regular annual meeting, change the time of the annual meeting thereof : Neb. 1,16,59.

If any regular election for directors or other officers shall not be held at the stated time thereof, the officer or officers whose duty it shall be to call such election may be compelled, by any court of competent jurisdiction, to call and hold the same ; and if said officer or officers reside without this commonwealth, such election may be ordered by such court upon the application of any number of stockholders holding and owning not less than ten shares of stock in the corporation : Ky. p. 769, § 3.

If the president and secretary fail to call any meeting of the shareholders in any corporation, required by law or by the by-laws of such corporation to be held, any two shareholders may call such meeting and appoint inspectors in manner herein above provided, notwithstanding such meeting should be held at a later day than had such failure not happened : Mo. 2484.

So, any six stockholders : Uta.

Any one (see above) : N.Y.

So, any ten, or a majority, may require the officers to call a special meeting on the same notice as an annual meeting : Ct. 1919.

NOTE. — a “As soon as conveniently may be :” N.J., Del.

§ 8052. **Special Meetings.** The directors have generally power to call special meetings : Ala. 1681.

Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established (or where it is desirable to hold such meeting : Mo., Fla.; or it cannot otherwise be called : Me.) may, on written application of three or more (two or more : Mo; one third of the stock : Fla.) of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation by giving the notice required : Mass. 105,11; Me. 46,4; R.I. 152,5; Mich. 4863; Minn. 3135; Mo. 2482; Cal. 5311; Dak. Civ. C. 412; Ida. 2598; Fla. 34,11; Oka. 987; and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat : Mass.; R.I.; Mich.; Mo. 2483; Minn.; Cal.; Dak.; Ida.; Fla. 34,12; Oka.

If the corporation is “not local,” a justice of the peace where the meeting is to be held may issue the call : Me.

When the law requires the notice to be given in some particular way, the justice must designate the newspaper or place of posting in his warrant : Me.

Whenever, for want of sufficient by-laws for the purpose, or of officers duly authorized (or from the improper neglect or refusal of such officers : N.J.), or from other legal impediment, a legal meeting of any kind of the stockholders of any corporation cannot be otherwise called, three or more stockholders thereof may call a meeting of the company by giving ten days' notice in a newspaper circulating in the county wherein the business is conducted, or where their principal place of business or office in this state is located; and such meeting so called shall be a legal meeting of the company; and if there be no officers of the company present whose duty it is to preside at meetings, the stockholders present may elect officers for the meeting; and it shall be the duty of the secretary of the company to record the proceedings of such meeting in the book of minutes of the company : N.J. Corps. 51; Del. V. 17,147,28.

A general meeting of stockholders may be held at any time upon the call of the board of directors, or of stockholders holding together one tenth (one fifth : S.C.) of the capital stock, upon their giving notice of the time and place for such meeting, (1) for thirty days, in a newspaper published in or near the place at which the last annual meeting was held : Va. 1114; S.C. 1886,288,13. (2) By advertisement once a week, for two weeks, in a newspaper near the principal office : W.Va. 53,11.

The stockholders of any stock corporation owning two thirds of the stock in such corporation, upon which all assessments have been fully paid up, may call a meeting of the stockholders of such corporation, by signing a call therefor, with their proper names, stating the number of shares held by each, and filing the same with the president or secretary of such corporation, and publishing the same in a newspaper in this state where the principal office of such corporation is kept, and at the seat of government, for three successive weeks prior to the time fixed for holding such meeting, and mailing a copy thereof to each of the directors of said corporation at his usual place of abode; and the secretary of such corporation shall enter such call upon the records thereof, and the fact of such publication, and mailing such notice, giving the name of such paper, with the dates and places of publication, which shall be *prima facie* evidence thereof : Ill. 32,22.

A special election may be called by the proper officers of such corporation for electing such officers by giving such notice as is required for the annual election ; but if such officers shall refuse or neglect to call such special election for ten days after the time fixed for the annual election, or if there be no officers authorized to call such special election, then any two or more members of such corporation may call a special meeting for the election of officers in the manner prescribed in section [8034]. When the day fixed for the annual election of officers, or other meeting of a corporation, shall fall on Sunday or on a legal holiday, such election or meeting shall be held on the next succeeding secular day : Wis. 1762.

General meetings of the stockholders of any corporation, incorporated under the laws of this state, may be called at any time upon the requirement of stockholders entitled to vote a majority of the stock of said corporation, of which meeting not less than ten days' notice shall be given in a newspaper published in the county in which the principal place of business of said corporation is situate, and also in a newspaper published in the city of Baltimore, and when said principal place of business is situate in said city, then in two newspapers published therein ; and if the president and directors refuse to call such meeting, the said stockholders so owning a majority of said stock may do so on giving notice as above set forth : Md. 23,6.

**Notice.** Ten days' notice in a daily paper, or a weekly paper, or by notice served personally on each shareholder in writing, setting forth the place and hour and the object of such meeting : Mo. 2484. In other states, the same notice is required as in § 8050.

" Written or printed notice of each subsequent meeting of such corporation, specifying the place, day, and hour of such meeting, shall be given by the president or secretary to each stockholder, by leaving it with him, or at his residence or usual place of business, or by depositing it in some post-office for transmission by mail, postage paid, addressed to him at his last known place of residence, at least five days before said meeting : " Ct. 1945.

All notices of subsequent meetings of stockholders or directors shall be given for such time and in such manner as the directors may prescribe : Ore. 3226.

When all (in Fla. a *majority*) the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed : Me. 46,5 ; Ill. 32,20 ; Mich. 4864 ; Wis. 1761 ; Minn. 3137 ; Mo. 735 ; Cal. 5317 ; Dak. Civ. C. 414 ; Ida. 2604 ; Fla. 34,13 ; Oka. 989.

A corporation when so assembled may elect officers to fill all vacancies, and act upon such other business as may by law be transacted at a regular meeting : Mass. 105,12 ; R.I. 152,6 ; Mich. 4865 ; Minn. 3136 ; Cal. 5318 ; Dak. Civ. C. 414 ; Ida. 2605 ; Oka.

By-laws may be adopted or amended at meetings called for the purpose : Ct. 1946. See Art. 807.

§ 8053. **Conduct of Meetings.** When a meeting is called by a justice of the peace, he, or the person to whom his warrant was directed, may call the meeting to order and preside therein until a clerk is chosen and qualified, if there is no officer present whose duty it is to preside. The person presiding is not responsible for an error in judgment in receiving or rejecting the vote of a person claiming to be a member : Me. 46,7.

Every meeting of shareholders in any corporation shall be convened at nine o'clock A.M., and continued during at least three hours, unless the object for which it was called be accomplished sooner ; *provided*, that if the object of such meeting be for any



other purpose than to hold an election, or to take a vote on any proposition, it shall be regulated by the by-laws of the corporation as to the manner of convening it, the time at which it shall be held, and the manner of conducting it; any corporation in which there are but ten, or a less number, resident stockholders, may regulate by by-laws the manner of appointing inspectors, their number, and their qualifications: Mo. 2484.

The poll must be opened between nine A.M. and five P.M., and shall continue open at least one hour by daylight, and close before nine P.M.: N.J. Corps. 37.

A meeting of stockholders may adjourn from time to time until its business is completed: Va. 1115; W.Va. 53,42; Col.<sup>a</sup> 242. So, of course, in other states.

Not exceeding sixty days: Col.

If a sufficient number fail to attend at the time and place for a meeting, those who do attend may adjourn from time to time until a meeting shall be regularly constituted: Va. 47,1115; W.Va. 53,42; Cal. 5312; Dak. Civ. C. 411; Ida. 2599; Oka. 986.

At every election of directors, the transfer-books or stock-books of the corporation shall be produced to test the qualifications of the voters: N.J. Corps. 41 & 45; Del. V. 17,147,26; Mo. 2486.

If the officers refuse to produce them, they are ineligible for any office: N.J.

No *ex parte* injunction shall be granted within ten days of the day for a stockholders' meeting of any private corporation, to restrain voting upon any shares of stock in such corporation, excepting that injunctions may be granted upon proper bond, as now required by law, to restrain voting upon such shares upon any matters excepting the organization of the meeting and its adjournment: Ct. 1889,39.

It shall be the duty of the secretary, or other officer who shall have charge of the transfer-books of said company, to prepare and make out, at least ten days before every election, a full, true, and complete list of all the stockholders of said company entitled to vote at the ensuing election, with the number of shares held by each, which list shall be made and arranged in alphabetical order, and shall at all times, during the usual hours for business, be open to the examination of any stockholder of such company; and *further*, that the book or books aforesaid shall be the only evidence who are the stockholders entitled to examine such book or books or list, and to vote in person or by proxy at any election for directors of said company; and the persons receiving the greatest number of votes shall be directors or managers: N.J. Corps. 36; Del. V. 17,147,22.

Within thirty days next before such meeting the records of the proceedings of the board shall be open to the inspection of three or more stockholders (of any stockholder: W.Va. 53,47) holding together one hundred shares of the capital stock. It shall be produced to the stockholders when demanded by them at any meeting: Va. 1123.

A list of stockholders, showing the number of shares and votes to which each is entitled, shall, for one month before every annual meeting, (1) be hung up in the most public room at the principal office or place of business of the corporation; but the failure to do so shall not affect the validity of the proceedings of such meeting: W.Va. 53,43.

(2) It must, upon written request of any stockholder, be filed with the secretary of state: Mass. 1889,222.

No by-law of any such corporation regulating the election of its directors shall be valid unless (1) it shall be made at least sixty days before the day appointed by law for the election to be held: Mo. 2507; and (2) shall have been published for at least two weeks in succession, immediately following its enactment, in some newspaper in the city or county where the corporation is situated, at least thirty days before the election: N.Y. 1890,564,8.

No by-law of the directors or managers of any incorporated company regulating the election of directors or officers of such company shall be valid unless the same shall

have been made thirty days previous to any election of such company, and subject to the inspection of any stockholder : N.J. Corps. 45 ; Del. V. 17,147,26.

Inspectors or tellers of elections must be sworn : N.Y. 1890,564,28 ; Pa. Corps. 26 ; Mo. 2485.

They are appointed in the manner prescribed by the by-laws, except, at the first election, by the directors : N.Y.

No person shall be chosen or appointed an inspector of an election of directors in a corporation of which he shall be (1) a director or officer : N.J. Corps. 42.

(2) Or candidate for director : N.J. ; Del. V. 17,148,23.

If such inspector is elected director, his election is void, and the directors may not appoint him to the vacancy within the year succeeding ; but this does not apply to the first election of directors : N.J., Del.

"That the certificate of stock and transfer-books, or either, of any corporation within this commonwealth, shall be *prima facie* evidence of the right to vote thereon, by the person named therein as the owner, either personally or by proxy. If, however, objection is taken at the time the ballot is tendered by an actual stockholder, setting out in writing, under oath, that the stock is not owned absolutely and *bona fide* by the person in whose name it stands in the certificate or on the transfer-books, and who in person or by proxy is in fact offering to vote thereon, it shall be the duty of the judges of election to inquire and determine, summarily, whether the name given in the certificate or standing on the transfer-books is that of the absolute and *bona fide* owner thereof, or of a holder of the same as executor, administrator, guardian, or as trustee created by last will and testament, or by decree of court. If not, then the vote or votes so tendered shall be rejected.

"SECTION 2. In cases where, by the terms of the preceding section, the person in whose name the stock stands in the certificate or on the transfer-books is not permitted to vote, the beneficial owner thereof, including a person who has transferred stock to a trustee as collateral for a loan, reserving in the conveyance the right to vote upon the stock, shall, upon furnishing evidence of ownership satisfactory to the judges of election, be entitled to vote : " Pa. 1889,108.

Within fifteen days next before any meeting held for the election of directors or trustees, or for the determination of any question by the stockholders of any corporation, or by the subscribers to its stock, or by its creditors and stockholders for its reorganization, any person or persons entitled to vote at said meeting and owning at least a one-tenth interest in its stock, may apply to the Court of Common Pleas for the appointment of inspectors for such meeting ; but no such application shall be acted upon until notice thereof has been served upon the corporation : O. 1890,3245 a.

Upon the hearing of such application, the court or judge shall appoint three competent disinterested persons inspectors for such meeting, if such appointment be considered proper and right ; and, for good cause, may thereafter vacate such appointment as to one or more of said persons, and appoint another or others instead. In case of the failure of any inspector to attend said meeting, or to act thereat, the stockholders may fill the vacancy so caused : O. 1890,3245 b.

Before every such meeting, it shall be the duty of the officer or the agent of the corporation having charge of the transfer of its stock, to make out, under oath, a list of its stockholders, showing the number and classes of shares held by each, as shown by its books on the date fixed for closing the stock transfers before its meetings ; and if no time be fixed therefor, then on the tenth day prior to the date of such meeting. Such list shall be delivered to the inspectors of the meeting, and shall be *prima facie* evidence of the ownership of its stock ; but in case of its absence the inspectors shall ascertain the ownership of stock by the corporation books, stock certificates, or other satisfactory proof : O. 1890,3245 c.

The inspectors so appointed, or, if none be appointed, then those selected by the meeting, shall receive and count the votes cast at such meeting, or at any adjournment thereof, either upon an election, or for the decision of any question to be decided by vote, and determine the result, and their certificate of the result shall be *prima facie* evidence thereof: O. 1890,3245 d.

All elections for directors and other officers by private corporations shall be held within the territorial limits of the state of Kentucky; and in the case of railroad companies and turnpike companies the time and place of holding the same shall be advertised by not less than three insertions in a newspaper published in some county in which such road, or a part thereof, may be situate. Any such election held outside of Kentucky shall be void. Provided, this act shall not be construed so as to include in its provisions the Cincinnati Southern Railroad Company: Ky. p. 769, § 1.

If the object of such meeting be to elect directors, or to take a vote of the shareholders in such corporation on any proposition in the notice aforesaid, or at any time previous to such meeting, the president, when not otherwise provided by law, shall appoint not less than two shareholders, who are not directors, inspectors to receive and canvass the votes given at such meeting, and certify the result to him. At the next meeting of the board of directors, which shall be held within two weeks thereafter, the president shall lay before them the returns so certified; and thereupon such proceedings shall be had as the subject matter decided by the election, or the vote, may require; and if for directors, the persons who received a majority of the votes cast shall be notified thereof: Mo. 2484.

At each election after the first, the president of the corporation shall act as inspector of election, and certify who are elected directors: Ore. 3227.

NOTE. — "Of the election.

§ 8054. **Voting.** In nearly all states (see § 8071, however) each stockholder has one vote for each share: N.H.<sup>a</sup> 149,19; Vt.<sup>d</sup> 3286; Ct. 1926; N.Y. 1890, 564,54; N.J.<sup>b</sup> Corps. 38; Ind. 3002; Wis. 1760; Md. 23,58; Del.<sup>b</sup> V. 17,147,18; 1148; Va. 1116,1148; Tenn. 1706; Ark. 969; Ore. 3223; Col. 242; Wash. 2425; Dak. Civ. C. 406; Ida. 2594; Wy. 505; Uta. 2285; S.C. 1886,288,11; Ala. 1481; N.M. 196; D.C. 556; Oka. 980. Compare § 8058.

Not exceeding one eighth part of the whole number of shares: N.H.

But he must, in a few states, vote one such vote for each share owned by him for as many persons as there are officers to be elected, or he may cumulate his votes, and give one candidate as many votes as the number of his shares multiplied by the number of such officers to be elected, or distribute such number of votes among the several candidates in any way he see fit: Pa. Corps. 28; Ill. 32,3; Mich. 4885a; Kan. 23,27a; W.Va. 53,44; Mo. 2490; Cal. 5307; Nev. 806; Mon. G. L. 450. Compare Vol. I., § 450.

Upon other questions he has one vote for each share, as in other states: W.Va., Mon.

But no stockholder can vote on stock unless it has been standing in his name on the books of the corporations at least (1) thirty days prior to the election or meeting: N.Y.; Kan. 23,27; Mo. 2486.

(2) Twenty days before: N.J. Corps. 38; Del. V. 17,147,22.

(3) Ten days before: Ind. 3002; Cal. 5312; Dak. Civ. C. 411; Ida. 2599; Oka. 986.

All elections must be by ballot: N.J.<sup>b</sup> Corps. 37; Pa.; Md.; Del.<sup>b</sup> V. 17,148,23; Cal. 5307; Nev. 806; Col. 242; Wash.; Dak. Civ. C. 406; Ida.; Mon.; Wy.; N.M. 196; D.C.; Oka. See § 8043 for citations.

In other states the whole matter of voting is left to each corporation to determine for itself by its by-laws, or otherwise: R.I. 152,3; Mich. 4861; Del. 70,2. And see §§ 8070,8071.

**Assessments.** No person shall vote on any shares until all assessments which have been ordered and have become due and payable (for thirty days preceeding : Pa.) thereon have been fully paid : N.H. 149,23 ; Md. 23,58 ; Ore.<sup>c</sup> ; Pa. Corps. 29 ; N.Y. 1890,564,54.

No person claiming to be a stockholder in his own right shall vote as such until he shall make oath, if required by any stockholder at such meeting, before a justice of the peace, that he is the absolute and *bona fide* owner of the shares claimed by him : N.H. 149,20.

No person shall vote or issue a proxy to vote at any meeting of stockholders or bondholders, or both, upon any stock or bonds which are not in his possession or under his control, or where he has ceased to retain the title thereto, notwithstanding such stock or bonds may stand in his name on the books of the corporation.

No stockholder shall sell his vote upon any stock or bonds to any person for any sum of money or anything of value.

Any person offering to vote upon stock or bonds shall, if required by any inspector of election, or any stockholder present, take and subscribe the following oath : " I do solemnly swear that in voting at this election I have not, either directly, indirectly, or impliedly, received any promise or any sum of money or anything of value, to influence the giving of my vote or votes at this meeting, or as a consideration therefor ; and that I have not sold or otherwise disposed of my interest in or title to any shares or bonds in respect to which I offer to vote at this election, but that all such shares and bonds are still in my possession, or subject to my control : " N.Y. 1890,564,54.

No share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received, or entitle the holder to vote, unless the same shall bear date and have been executed within three months next preceeding such election or meeting : Pa. Corps. 36 & 58.

A corporation may provide in its articles of incorporation that each stockholder, irrespective of the amount of stock he may own, shall be entitled to one vote, and no more, at any election of directors, or upon any subject submitted at a stockholders' meeting, and when such provision is made it shall be governed thereby : O. 3245a.

Every corporation where articles of incorporation contain the limitation mentioned shall be subjected to the following provisions :

1. No person shall hold or own stock in excess of one thousand dollars face value.
2. The directors shall annually, within thirty days after the thirty-first day of December, make and file with the recorder of the county in which the corporation is doing business a statement of its financial condition.
3. By-laws for the government of the corporation, and for the distribution of its net earnings among its workmen, patrons, and shareholders, not inconsistent with the constitution and laws of the state, may be made by the stockholders : O. 3245b.

Provided, that nothing herein contained shall prevent any corporation by their by-laws limiting such *bona fide* shareholder to a single vote, or one vote for every full share of paid-up stock, or its equivalent in assessable stock, disregarding the number of shares of stock he may own : Wash. 2425.

When five or more stockholders give thirty days' notice before election of their intention to canvass votes, delivering such notice at the office of the corporation to the president, secretary, or other principal officer, such officer must repeat such notice by mail to all stockholders in the state : Md. 23,8.

Upon proof made to the judges of the election of such notice, they shall require every stockholder to make oath that the stock which he offers to vote is his sole and *bona fide* property or belongs *bona fide* to him and his partners, or is held by him as trustee or in some other fiduciary relation, to be specified in such oath, and that his title has been *bona fide* acquired and not colorably and fraudulently created ; nor with any intent to increase the number of votes which would otherwise be allowed to said stock ;

nor in any manner, directly or indirectly, to violate or evade the company's voting laws; and that said stock is not retained in his name with any such intent: Md. 23,9.

When stock stands in the name of any corporation, some officer thereof must take this oath, and further declare that he has full opportunity, from his official station in the corporation, to know the opinions of a majority of the directors in relation to such stock, and that he represents them fairly: Md. 23,10.

When a vote is offered to be given at any meeting, upon stock transferred within sixty days before such meeting, if any present object to the vote, it shall not be counted, unless the stockholder has made or shall make oath that he is the *bona fide* holder of the stock on which such vote is to be given: Va. 1117.

At elections held by such corporations, each stockholder shall be entitled to vote only in proportion to the amount that shall have been actually paid up on amount of the stock subscribed or held by him: Ky. p. 769, § 2.

**Non-resident Stockholders.** "So much and such parts of the several acts of incorporation in this state, or any law thereof, as prohibits stockholders residing out of the state from voting on stock held by them, are hereby repealed:" N.J. Corp. 40.

NOTES. <sup>a</sup> Except banks whose charters otherwise provide. <sup>b</sup> Unless otherwise provided by the charter or by-laws. <sup>c</sup> Except at the *first* meeting. <sup>d</sup> See § 8045, note <sup>c</sup>.

§ 8055. **Voting by Trustees or Pledges.** Executors or administrators, guardians, and trustees represent the stock held by them in any such capacity, and vote thereupon: N.H. 149,21; Mass. 105,13; N.J. Corps. 39; Ind. 3009; Ill. 32,24; Wis. 1760; Minn. 3132; Md. 23,13; Del. V. 17,147,23; Mo. 2484; Cal. 5313; Nev. 812; Wash. 2431; Col. 257; Dak. Civ. C. 393; Ida. 2600; Mon. G. L. 465; Wy. 517; Uta. 22,85; N.M. 202; D.C. 577; Oka. 965.

So, in most states, pledgors of stock, if it be pledged or loaned: N.H.; N.Y.; N.J.; Ind.; Ill.; Md.; Mo.; Nev. 813; Col.; Wash. 2432; Mon.; Wy.; N.M. 203; Ariz. 1889,50; D.C. 578.

No person can vote on shares of stock belonging to the corporation: Me. 46,13; N.J. Corps. 43; Mo. 2487; Del.

Or hypothecated to it: Me., N.Y., N.J., Mo.

"After the owner of stock in a corporation has transferred, mortgaged, or in any way pledged the same to another for security merely, and it so appears in such transfer, mortgage, or pledge, and on the books of the corporation, such owner continues to have the right to vote upon such stock at all meetings of the stockholders until his right of redemption ceases:" Me. 46,14.

§ 8056. **Quorums.** In some states each corporation may prescribe for itself what number shall be necessary to a quorum (and see § 8071): R.I. 152,3; N.J. Corps. 21; Pa. Corps. 25; Del. 70,2; Mich. 4861; S.C. 1886,288,24.

In most states, a majority of the stock present at a stockholders' meeting is a quorum: Vt.<sup>c</sup> 3286; Pa.; N.J.<sup>c</sup> Corps. 21; Del.<sup>a</sup> V. 17,147,18; Wis.<sup>a</sup> 1749; Va.<sup>b</sup> 1115; W.Va.<sup>b</sup> 53,42; Ark. 969; Cal. 5312; Dak. Civ. C. 411; Col. 242; Ida. 2599; Mon. 450; Wy. 505; S.C.<sup>a</sup> 1886,288,4; Oka. 980.

NOTES. — <sup>a</sup> Except when otherwise provided by law or the articles. <sup>b</sup> Of the first meeting. <sup>c</sup> Unless the by-laws prescribe otherwise.

§ 8057. **Proxies.** "At all meetings of corporations having a capital stock, stockholders may vote in person, or by an attorney duly authorized thereto:" Ct. 1925; Va. 1116.

"Each corporation may prescribe the mode or form of voting by proxy by its by-laws:" R.I. 152,3; Del. 70,2; Mich. 4861<sup>c</sup>; S.C. 1886,288,24.

And see § 8071.

So, a stockholder can vote either in person or by proxy : Me. 46,13 ; N.Y. 1890,564,54 ; N.J. Corps. 33 ; Wis.<sup>a</sup> 1760 ; Kan. 23,4 ; Md. 23,57 ; Va. 1116 ; W.Va. 53,42 ; Tenn. 1706 ; Cal. 5312 ; Dak. Civ. C. 411 ; Mo. 2490 ; Nev. 806 ; Col. 242 ; Wash. 2425 ; Mon. G. L. 450 ; Wy. 505 ; Uta. 22,85 ; S.C.<sup>b</sup> 1886,288,4 ; N.M. 196 ; D.C. 556.

So, absent stockholders may vote by *written* proxy : N.J. Corps. 21 ; Del. V. 17, 117,18 ; Ore. 3223 ; S.C. 1886,288,21 ; Ida. 2599 ; Okla. 986.

All proxies must be dated (1) within six months of the election : Pa. Proxies 1.

(2) Within thirty days before : Me. 46,13.

(3) Within three years before : N.J.

(4) Within eleven months before : N.Y.

Unless specified therein to continue in force a longer time : N. Y.

They are not valid after a final adjournment of such meeting : Me.

The meeting must be named therein : Me.

They must not be in blank : Pa.

They are not transferrable : Pa.

They are revocable at pleasure : N.Y.

Except in railroad corporations, any person not a stockholder, being authorized by a writing under the hand of any stockholder entitled to vote by proxy filed with the clerk or cashier, may vote as proxy in the right of such stockholder ; but no stockholder shall act as proxy for any other stockholder, nor shall any person act as proxy for more than one stockholder, or vote as proxy for shares exceeding one eighth of the whole capital stock : N.H. 149,22.

No proxy shall confer the right to vote at more than one meeting, which shall be named therein : N.H. 149,23.

Voting by proxy shall not be lawful at any meeting of any railroad corporation, except by female stockholders, and by stockholders unable, by reason of sickness, infirmity, or old age, to attend such meeting, each of whom shall make, subscribe, and attach to his proxy an affidavit setting forth his inability to attend for one or more of said reasons. No person at any such meeting shall vote by proxy on shares exceeding in par value the sum of five thousand dollars, nor on a greater number of shares by proxy than are sufficient, with the shares owned and voted upon by himself at such meeting, to make shares amounting to five thousand dollars in par value ; nor shall any stockholder authorize more than one person to vote on his shares by proxy at the same meeting : N.H. 149,25.

If any person shall fraudulently vote upon any share of which he is not the *bona fide* and absolute owner, except in the cases before provided for, or shall fraudulently procure or receive the transfer of any share for the purpose of voting thereon, or shall directly or indirectly solicit any proxy for any other person to vote upon, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars, or both : N.H. 149,26.

Stockholders may also be represented by a general power of attorney, produced at the meeting, until it is revoked. No person can give, by right of representation, a greater number of votes than is allowed to any one by the charter or by-laws : Me. 46,13.

No stockholder shall sell his vote, or issue a proxy to vote, upon stock or bonds to any person for any sum of money or value : N.Y.

No person shall vote at any meeting of the stockholders of any bank or railroad company by virtue of any power of attorney not executed within one year next preceding such meeting ; and no such power shall be used at more than one annual meeting of such corporation : Ct. 1927.

Any person offering to vote as agent or attorney or proxy for any other person shall.

if required by any such inspector or stockholder, take and subscribe the following oath : "I do hereby solemnly swear that the title to the stock or bonds upon which I now offer to vote is, to the best of my knowledge and belief, truly and in good faith vested in the persons in whose names they now stand, and that such persons shall retain control of the same, and that I have not, either directly or indirectly, or impliedly, given any promise or any sum of money, or anything of value, to induce the giving of authority to vote upon such stock or bonds to me." The inspectors may administer this oath, and all such oaths and all proxies shall be filed in the office of the corporation. The books and papers of the corporation shall be produced at any meeting of its stockholders upon the request of any stockholder, and if the right to vote upon any share of stock at any such meeting shall be challenged the inspectors of election shall require the transfer-books of the corporation to be produced as evidence of stock held therein : N.Y. 1890,564,54.

No person shall be permitted to vote upon the proxy of a stockholder unless he shall produce, annexed to his proxy, an affidavit of such stockholder, stating the same facts to which the oath of such stockholder might have been required (§ 8054) had he offered to vote in person on the shares mentioned in the proxy : Md. 23,11.

No officer or director of a corporation shall vote as the proxy of a stockholder thereof : W.Va. 53,45.

NOTES. — <sup>a</sup> At elections only. At other meetings he can only vote by proxy when the by-laws so provide. <sup>b</sup> Of the first meeting.

§ 8058. **Remedies.** Compare § 8054. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the district court of the district in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court, or the judge thereof, to the adverse party, or those to be affected thereby : Cal. 5315 ; Dak. Civ. C. 412 ; Ida. 2602 ; Oka. 987.

If any person shall conceive himself aggrieved by an election, or any proceeding concerning an election of directors or officers in any such corporation, he may apply to the Supreme Court for redress, giving a reasonable notice of his intended application to the party to be affected thereby : N.Y. 1890,563,15 ; N.J. Corps. 44 ; Del. V. 17,147,24 ; Mo.<sup>a</sup> 2520.

It shall be the duty of such court, upon such application, to proceed forthwith, in a summary way, to hear the proofs and allegations of the parties, or otherwise to inquire into the causes of complaint, and thereupon to make such order and grant such relief as the circumstances and justice of the case shall seem to require. If the election complained of shall be set aside, the supreme court may order a new election at such time and place as they shall appoint : N.Y. ; N.J. ; Mo. 2521 ; Del.

The court, if they cannot otherwise arrive at a satisfactory result, may order an issue between the parties, to be made up in such manner and form, and to be tried in such court, as they shall select ; or may permit or direct the attorney-general to file an information in the nature of a *quo warranto*, if the case be one in which that proceeding would be competent and effectual : N.Y. ; N.J. ; Mo. 2522.

If any such issue shall be ordered, or information permitted or directed to be filed, it shall be the duty of the court to make such further orders in relation to the time and mode of pleading, the examination of witnesses or the parties, the production of books and papers, and the time and place of trial or hearing, as shall in their judgment be effectual for expediting the proceedings, saving expense to the parties, and causing a

final determination to be had with as little delay as the nature of the controversy will permit: Mo. 2523.

And the court may adjudge the costs according to equity: Mo.

Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members, and may be set aside by petition to the district court of the county where the same was held: Cal. 5312; Dak. Civ. C. 411; Ida. 2599; Oka. 986.

NOTE. — "The Circuit Court: Mo.; the Superior: Del.

## **Art. 806. Powers and Duties of Officers.**

§ 8060. **Powers of Directors.** In several states it is specified that the corporate powers are to be exercised by them: Ct. 1950; N.Y. 1875,611,10; 1890, 564,20; N.J. Corps. 16; O. 3248; Ill. 32,6; Wis. 1772,1776; Minn. 2659; Del. V. 17,147,17; Va. 1118; W.Va. 53,49; Ore. 3225; Cal. 5305; Dak. Civ. C. 407; Ida. 2592.

They must perform the duties enjoined on them by law and the by-laws of the corporation: Cal. 5308; Dak. Civ. C. 408; Oka. 982.

Every corporation acts through its officers, and is responsible for the acts of such officers in the sphere of their appropriate duties; and no corporation shall be relieved of its liability to third persons for the acts of its officers by reason of any by-law or other limitation upon the power of the officer not known to such third person: Ga. 1680.

The directors have the general management of the affairs of the corporation: O. 3248; Va. 1118; Kan. 23,23; Ark. 964; Tex. 585.

Except so far as is otherwise provided by laws of the state or the by-laws: Va.

So, they have "power to do, or cause to be done, all things that are proper to be done by the corporation:" W.Va. 53,49.

The business of every such corporation shall be managed by the directors thereof, subject to the by-laws and votes of the corporation, and, under their direction, by such officers and agents as shall be duly appointed by the directors or by the corporation: N.H. 149,3.

The board of directors, in the exercise of their powers, shall be subject to such by-laws and regulations, not inconsistent with the laws of this state, as the stockholders may pass from time to time in general meeting: W.Va. 53,55.

The management of the property and business of the corporation is under the control of the directors, who have power to elect and appoint all officers, agents, and servants, removing them at pleasure, fixing their compensations, and prescribing their duties; and to exercise such other powers as may be delegated to them by the by-laws of the adoption of the stockholders: Ala. 1665.

§ 8061. **Duties.** They shall keep a record of their proceedings, which shall be verified by the signature of the president or president *pro tempore*. No member of the board shall vote on a question in which he is interested otherwise than as a stockholder, except the election of a president, or be present at the board while the same is being considered; but if his retiring from the board in such case reduce the number present below a quorum, the question may nevertheless be decided by those who remain. On any question the names of those voting each way shall be entered on the record of their proceedings, if any member at the time require it: W.Va. 53,52.

They shall keep a full and true record of all their proceedings: Tenn. 1706.

An annual statement (compare also § 8080) of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder: Tenn. 1706.



The clerk shall record all votes and proceedings of the corporation and those of the directors so far as required by the charter or by-laws, shall keep a record of all instruments and papers required to be recorded in his office, and shall perform all other duties incumbent on him by law or usage or by the by-laws: N.H. 148,9.

They may dispose of the residue of the capital stock, not subscribed for, according to the by-laws: Kan., Tex.

**§ 8062. Meetings.** The board shall hold meetings at such time as they shall see fit or the president shall require: Va. 1122; W.Va. 53,51. They may, by resolution, prescribe when and where their regular meetings shall be held, how special meetings shall be called, and what notice of their meetings shall be given: W.Va.

When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or, if there be none, on the order of two directors: Cal. 5320; Dak. Civ. C. 412; Ida. 2607; Oka. 987.

The time, place, and manner of calling meetings of the directors or trustees of any corporation shall be fixed upon in the by-laws of such corporation: Ill. 32,20; Fla. 34,10.

Questions before it shall be decided *viva voce*. No member of the board shall vote on a question in which he is personally interested otherwise than as a stockholder. The names of those voting shall be taken down if desired at the time by any member. There shall be a record of the votes and of all other proceedings of the board, and the same shall be verified by the signature of the president or president *pro tempore*: Va. 1122.

The by-laws of every corporation shall provide for the calling of meetings of the directors or trustees: Ill. 32,20; Col. 254. When such directors or trustees shall be present at any meeting, however called or notified, or shall sign a written consent thereto on the record of such meeting, the acts of such meeting shall be as valid as if called and notified; *provided*, that unless it shall be stated in the certificate of incorporation that meetings of the directors or trustees may be held beyond the limits of this state, or unless such meeting was authorized or its acts ratified by a vote of a majority of the stockholders at a regular meeting, the action of any meeting held beyond the limits of this state shall be void: Col. When all such officers shall be present at any meeting, however called or notified, or shall sign a written consent thereto on the record of such meeting, the acts of such meeting shall be as valid as if legally called and notified; *provided*, that the action of any meeting held beyond the limits of this state shall be void unless such meeting was authorized or its acts ratified by a vote of two thirds of the directors, trustees, or officers corresponding to trustees, at a regular meeting: Ill. 32,20.

If less than a majority, a written statement thereof must be filed by the incorporators or the directors with the secretary of state or county clerk: Ore.

**§ 8063. Quorum.** In most states (see § 8071) a majority of the directors or trustees (convened according to the by-laws: Ct., Ark.) constitutes a quorum: Vt.<sup>a</sup> 3286; Ct. 1928; N.Y. 1890,563,17; 1890,23; Pa. Corps. 23 & 87; O. 3247; Wis. 1749; Minn.\* 2666; Kan. 23,17; Md.<sup>a</sup> 23,3; W.Va.<sup>b</sup> 53,49; Tenn. 1706; Mo.<sup>a</sup> 2510; Ark. 969; Tex. 579; Cal. 5308; Nev. 808; Wash. 2427; Dak. Civ. C. 408; Ida. 2595; N.M. 198; Oka. 982.

So, "the powers vested in the directors may be exercised by a majority of them:" Ore. 3227; S.C. 1886,288,27; Fla. 34,9.

And any decision of a majority of a quorum constitutes a corporate act: N.Y.,<sup>a</sup> Md.,<sup>a</sup> Mo., Tex., Cal., Nev., Wash., Dak., Ida., Uta., Fla., N.M., Oka.

When the corporate powers are directed to be exercised by any particular body, or number of persons, a majority of such body or persons, unless it is otherwise provided, form a board for the exercise of such powers: Ala. 1678.

At each election after the first, the president of the corporation shall act as inspector of election, and certify who are elected directors. The powers vested in the directors may be exercised by a majority of them, and any less number may constitute a quorum at all regular or stated meetings authorized by the by-laws of the corporation in all cases when either the directors or incorporators shall have filed with the secretary of state and county clerk a written statement designating such less number sufficient to form a quorum: Ore. 3227.

"The number of directors or trustees named in the agreement of incorporation as being sufficient to form a quorum for the transaction of business shall form a board, providing that a quorum shall not be less than one fourth of the whole number of directors or trustees, and every decision of a majority of the board so formed: Uta. 1890,45.

NOTES. — Unless otherwise provided <sup>a</sup> in the charter; <sup>b</sup> in the by-laws.

### Art. 807. By-laws.

§ 8070. **Power to Adopt.** They may make (1) all by-laws and regulations for their own government consistent with the constitution and laws of the state: N.H. 148,6; Mass. 105,4; Me. 46,1; R.I. 152,1; Ct. 1906; N.J. Corps.<sup>a</sup> 1; O. 3249; Mich. 4860; Wis. 1748; Io. 1059; Minn. 2458; Kan. 23,11; Neb. 16,124; Md. 2355; Del. 70,1; Va.<sup>a,b</sup> 1068; Ky.<sup>a</sup> 56,2; Tenn. 1704; Mo.; Tex.; Cal. 5301; Nev.<sup>a</sup> 805; Col. 245; Wash. 2424; Dak. Civ. C. 403; Ida. 2588; Wy. 509; Uta. 2272; S.C. 1886,288,8; Ga. 1679; Miss. 1031; Ariz. 233.

(2) Any by-laws necessary and suitable to promote the objects of the corporation: N.H., Uta.

And consistent with their charters: Mass. 105,5; Me.; R.I.; Mich. 4861; Wis.; N.C. 1664.

(3) "Necessary by-laws:" Ind. 3002.

For other states see § 8071.

"Not inconsistent with other corporate rights and vested privileges:" Uta.

"Not incompatible with an honest purpose:" Minn.

Every corporation must, within one month after filing the articles of incorporation, adopt a code of by-laws for its government: Cal. 5301; Dak. Civ. C. 403; Ida. 2588; Oka. 975.

"Consistent with the laws of Congress and the territory:" Dak., Ida., Oka.

So, by-laws must commonly be adopted at the first meeting (see § 8031).

And may be altered or amended: N.H.

NOTES. — <sup>a</sup> Of the United States: N.J., Va., Ky., Nev. <sup>b</sup> When no other provision is specially made.

§ 8071. **Contents.** And, in particular, corporations may, when no other provision is specially made, provide by their by-laws (1) for the manner of calling and conducting their meetings: N.H. 148,6; Mass. 105,5; Me. 46,6; R.I. 152,3; N.J. Corps. 21; O. 3252; Mich. 4861; Wis.; Minn. 3129; Md. 23,55; Del.<sup>b</sup> V. 17,147,18; N.C.<sup>b</sup> 664; Cal. 5303, amt.; Dak. Civ. C. 404; Ida.<sup>b</sup> 2590; Miss. 1031; Oka. 976.

And to prescribe their times and places: N.H., N.Y.,<sup>c</sup> Pa., O., Md., Cal., Dak., Ida.,<sup>b</sup> Oka.

And of the directors also : Ill. 32,20 ; Col. 254. See also § 8062.

(2) For the number of members required to form a quorum : Mass. ; Me. ; R.I. ; N.Y. ; N.J. ; Pa. Corps. 24 ; O. ; Mich. ; Minn. ; Del. ; N.C.<sup>b</sup> ; Cal. ; Dak. ; Ida.<sup>b</sup> ; S.C. 1886,288,24 ; Miss. ; Oka.

(3) The method of voting on the stock or by proxy : Mass., Me., R.I., Mich., Wis., Minn., Del., N.C.<sup>b</sup> Cal., Dak., S.C., Ida.<sup>b</sup> Miss., Oka.

“The number of shares that shall entitle the members to one or more votes :” Mass., R.I., N.J., Mich., Minn., Del., N.C.<sup>b</sup>

“The number of votes that shall be given by shareholders :” Me.

(4) The mode of selling stock for unpaid assessments : Mass. ; Me. ; R.I. ; Mich. ; Minn. ; Md. ; Del. ; N.C.<sup>b</sup> ; Tenn. ; Ore. 3221.

(5) The number of directors : N.Y. ; W.Va. 53,49. The tenure of office of the corporation officers : N.H. ; Mass. ; Me. ; R.I. ; N.Y. 1890,564,27 ; O. ; Mich. ; Wis. ; Minn. ; N.C.<sup>b</sup> ; Cal. ; Dak. ; Ida. ; Oka. “Other than directors :” O., Cal., Dak.

To regulate the number of officers : N.H., N.Y., N.J.

Their powers and duties : N.H., N.Y., Pa., O., Cal., Dak., Ida., Wy., Oka.

The mode of choosing them : N.H., O., Cal., Ida., Wy., Oka.

Their compensation : O., Cal., Dak., Ida., Oka. And qualification : W.Va., Cal.

The “manner of their election by and among the directors :” N.Y.

(6) To provide for the election and removal of members : N.H.

“The time of the annual elections of directors, and mode and manner of notice thereof :” O., Cal., Dak., Ida., Oka.

(7) For its own government : Mass. 105,4 ; Vt. 3281 ; R.I. ; Ct. ; Pa. Corps. 22 ; Mich. 4860 ; Wis. 1748 ; Minn. 3127 ; Del. 70,1 ; Va.<sup>b</sup> 1068 ; W.Va. 52,1 ; N.C.<sup>b</sup> 663 ; Ark. 972 ; S.C. 1886,1288,22 ; N.M. 195.

(8) For the orderly conducting of its affairs : Mass. ; Vt. ; R.I. 152,1 ; Ct. ; N.Y. 1890,563,8 ; N.J. ; Pa. ; Mich. ; Wis. ; Io. ; Minn. ; Kan. ; Md. 23,55 ; Del. ; Va.<sup>b</sup> ; W.Va. 52,1 ; N.C.<sup>b</sup> ; Tenn. 1704 ; Mo. 2508 ; Ark. ; Tex. 575 ; Cal. 5354 ; Ore. ; Col. 245 ; Dak. Civ. C. 402 ; Ida. 2633 ; Mon. G. L. 482 ; Wy. ; S.C. 1886,288,26 ; Ala. 1664 ; Fla. 34,3 ; La. D. 684 ; N.M. ; Oka. 974.

And “the transaction of its business :” Ala., N.M.

(9) For the management of its property : Mass. ; R.I. ; Ct. ; N.Y. ; N.J. ; Mich. ; Wis. ; Minn. ; Kan. ; Md. ; Del. ; Va.<sup>b</sup> ; W.Va. ; N.C.<sup>b</sup> ; Mo. ; Tex. ; Ore. ; Cal. ; Dak. ; Ida. ; Mon. ; Wy. 543 ; S.C. ; Ala. ; Fla. ; N.M. ; Oka.

(10) For the transfer of its stock : N.Y. ; N.J. ; Kan. ; Md. ; Del. V. 17,147,1 ; Tenn. 1706 ; Mo. ; Tex. ; Cal. ; Ore. ; Dak. ; Ida. ; Mon. ; Wy. ; S.C. ; Ala. ; Fla. ; N.M. ; Oka. But not restraining its free sale : N.H. 149,15. See §§ 8116, 8150.

For the subscription for stock : Tenn. ; Nev. 811.

And time of payment of the same : Tenn. ; Nev. ; Wash. 2429.

And amount to be called at any one time : Tenn., Nev.

(11) The manner in which vacancies in any of the offices shall be filled until a regular election : N.Y., N.C.

The manner of electing or appointing inspectors of election : N.Y.

(12) Such others as are necessary and convenient for the accomplishment of its purposes : Wis.

(13) The amount of capital, and division of the same into shares : Tenn.

(14) To declare a lien on the stock for unpaid debts or subscriptions : S.C., Ala.

(15) The qualification of members when the corporation is not for profit : O.

(16) The manner of amending the by-laws : N.Y.

The term of all officers may be fixed by the by-laws of the corporation ; the same not, however, to exceed two years : Tenn. 1705.

Any association formed under the provisions of the preceding section may make by-laws imposing fines and penalties, and lay assessments to further the objects of such association ; but such by-laws and assessments shall be adopted by two thirds of the members of the association, and no assessment or fine shall exceed the sum of twenty-five dollars, and such association may sue for and collect such fines and assessments : Ct. 1908.

And it may frequently prescribe suitable penalties for the violation of its by-laws, not exceeding (1) §20 for each offence : Mass., Me., R.I., N.J., Pa., Mich., Wis., Minn., Del., N.C.<sup>b</sup> ; (2) §100 : Cal., Dak., Ida., Oka.

NOTES. — <sup>a, b</sup> See § 8070, same notes. <sup>c</sup> Of the *annual* meeting.

§ 8072. **Form.** The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose ; and in the event of such meeting being called, two weeks' notice of the same, by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or, if none is published therein, then in a paper published in an adjoining county (in the state capital : Ida.), must be given by order of the acting president. The written assent of the holders of two thirds of the stock, or of two thirds of the members if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose : O. 3251 ; Cal. 5301 ; Dak. Civ. C. 403 ; Ida. 2588 ; Oka. 975.

A copy of the by-laws must be posted in the principal place of business, subject to the public inspection : Io. 1076 ; Minn. 2463 ; Neb. 16,135 ; Fla. 34,35.

“ With the names of all officers appended thereto : ” Minn., Neb., Fla.

And published in the nearest newspaper : Fla.

A statement of the amount of capital stock subscribed, actually paid in, and the amount of indebtedness of the company, must also be kept posted in like manner : Io. 1077 ; Minn. 2464.

A copy of any by-law of any corporation incorporated under the laws of this state, under its seal, and purporting to be signed by the president, secretary, or treasurer of the corporation, shall be received as *prima facie* evidence of such by-law in the courts of this state : Md. 23,4.

By-laws may be made in a general meeting of the stockholders : Uta. See also § 8035.

So, at a general meeting “ called for the purpose : ” Pa. Corps. 22.

Unless the charter or articles prescribe otherwise : Pa.

They may be incorporated, by unanimous agreement, in the articles : N.H. 147,5.

All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as the “ Book of By-laws,” and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members called for that purpose by the directors, by a vote representing two thirds of the subscribers' stock, or by two thirds of the members, or the power to repeal and amend the by-laws and adopt new by-laws may, by a similar vote at any such meeting, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect

until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, shall be stated in the said book, and until so stated the repeal shall not take effect: Cal. 5304; Dak. Civ. C. 405; Ida. 2591; Oka. 972.

The written assent of the holders of two thirds of the stock, or two thirds of the members if there be no capital stock, shall be effectual to repeal or amend any by-laws, or to adopt additional by-laws: Cal. 5309.

§ 8073. The directors, in other states, may adopt by-laws: O. 3250; Ill. 32,6; Md. 23,55; Col.<sup>b</sup> 245; Wy.<sup>b</sup> 509; Uta. 2272; Kan. 23,19; Tex. 581; Mon. G. L. 454; D.C. 559.

"Not inconsistent with the laws of the state:" O., Ill., Md., Col., Mon., Wy., D.C. So, they may not override by-laws of the corporation: O.

They cease to have force if not confirmed at the next annual meeting of stockholders: Md.

But such by-laws may be altered or amended by vote of the stockholders: Md., Kan., Tex.

At an election ordered by the directors on the written application of a majority of the stock: Kan., Tex.

Stockholders' by-laws cannot be amended or rescinded by directors: Md.

"Such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company:" Mon., D.C.

By-laws to direct the manner of taking the votes of stockholders on the question of increasing or diminishing the number of directors or trustees, or of changing the corporate name, may be made by the directors of the corporation for the time being: Mo. 2506.

NOTE. — <sup>b</sup> Only when the articles of incorporation so provide.

## Art. 808. Reports.

§ 8080. Annual Reports. It is in many states made the duty of the president and secretary of every corporation (of the president, secretary, and clerk: Neb.; of the president and a majority of the directors, and the treasurer: N.H., Mass., Ct., N.Y., Mon., D.C.; of the president, secretary, and treasurer: Ill., La.; of the president and directors: Va., Md., D.C.; of the president and treasurer: Fla.; of the board of directors: W.Va.; of the clerk or treasurer: Me.) annually to prepare a report of the condition of the company, which they must swear to: N.H., Mass., Ct., N.Y., Ill., Kan., Neb., Md., Col., Mon., D.C.; and (1) file in the office of the secretary of state<sup>h</sup>: N.H.<sup>c,m</sup> 150,16; Me.<sup>k</sup> 46,31; Ill.<sup>d</sup> 32,17; Mass.<sup>l</sup> 106,54, 1887,225; N.Y.<sup>j</sup> 1890,564,30; Kan.<sup>e</sup> 23,24; La.<sup>i</sup> D. 3268.

And (2) publish in some newspaper in the county where the principal office is: Neb. 16,54; Mon.<sup>g</sup> G. L. 460; Fla. 34,36; D.C.<sup>j</sup> 566.

Or [and] (3) file with the town clerk of the town where the corporation is located: Ct.<sup>a,b</sup> 1937, 1956; 1889,65; (of all corporations); N.H.<sup>c,m</sup>; or with the recorder: Ill.; Col.<sup>f</sup> 252; D.C.; with the county clerk: N.Y., Ark.<sup>b</sup> 971, Mon.

(4) It must be submitted at the annual stockholders' meeting: Md. 23,5; Va. 1123; W.Va. 53,46. See also § 8061.

(5) The secretary of state lays it before the legislature in the first thirty days of its session: Me.

The report may be mailed to the secretary : Me. 46.32.

But this section does not apply to railroads or insurance companies : Mass.

Such report must contain (1) the amount of the capital stock of the company : Mass., Ct., N.Y., Kan., W.Va., Ark., Col., Mon., Fla., La., D.C.

So the amount paid in : Mass., Me., Ct., N.Y.

Showing the amount annually paid in, in cash or other property, separately : Ct.,<sup>a</sup> W.Va., Ark., La., Col., Mon., Fla., D.C.

(2) The property or assets held by the company : Mass., N.Y., Kan., W.Va.

"The estimated value thereof:" W.Va.

"The cash value of its credits:" Ct., Ark.,

"The cash value of its real estate:" Ct., Ark., La.

"The cash value of its personal estate:" Ct., Ark.; exclusive of patents, in the case of companies under the general law : Ark.

(3) The liabilities of such company : Mass., Kan., W.Va.

"The amount of its debts:" N.Y., Ct., N.H., W.Va., Ark., Col., Mon., Fla., D.C.

(4) The receipts during the previous year : N.Y., Kan., Va.

(5) The expenditures during the previous year : N.Y., Kan., Va.

(6) The name, residence and number of shares of each stockholder : Ct., Ark., Me., Mass., N.Y.

(7) The debts due to the company : N.H., W.Va.

Distinguishing the good from the doubtful : W.Va.

(8) The amount of all assessments voted by the company, and actually paid in : N.H.

(9) "A full, fair, and detailed statement of the condition of the company:" Neb., Va.

The value of all the property and assets of the company as existing on such May 1st : N.H.

(10) "A full and true statement of the affairs of the corporation:" Md.

(11) A statement of the surplus or contingent fund then on hand : Va. 1123.

"The estimated surplus or deficiency:" W.Va.

(12) The amount of dividends declared during the past year : W.Va., N.Y.

(13) The losses incurred or profits accruing during the past year : W.Va.

(14) The place of its principal business : La.

The real estate subject to taxes : Fla., La.

(15) A description of all real estate to which title was acquired in securing any debt or liability due such corporation, together with the time of acquiring title thereto:" Ill. 32,17.

Forms must be furnished by the secretary of state : N.H. 150,17.

The certificate is recorded or preserved by such officer : Ct., Ark., Col.

A duplicate is to be recorded with the secretary of state, in the case of companies organized under general law : Ct. 1956.

Every corporation organized under the laws of this state shall make a statement annually of its financial condition, setting forth its assets and liabilities, and shall furnish to each stockholder a true copy of the same, together with a list of the stockholders thereof and their place of residence : O. 3268.

"Corporations required to make report to the general assembly shall make them during the first week of each stated session:" Ct. 1940.

"That it shall be the duty of all corporations which may now or hereafter be authorized to transact business in this state, whether organized under general or special laws, although such corporation may not be organized under the laws of this state, and they are hereby required to file, on or before the thirtieth day of June next, and annually thereafter, within thirty days after the usual time of the annual election of directors, managers, or trustees, and the officers thereof, whether such election shall have been

held on the day fixed by law or not, in the department of state of this state, a complete list, duly authenticated by the signature of the president and secretary, of the names of such directors, managers, trustees, and officers, with the date of the election or appointment, term of office, and residence of each; and also to designate the business and the location of the principal office or place of business of the company in this state, as also in the state where organized:” N.J. Supp. Corps. 88.

Every corporation shall, within sixty days, when requested by the auditor-general, render to him a report, under the oath of its president or treasurer, of the amount of capital stock or bond indebtedness, issued pursuant to the provisions of this act, showing, in case of stock, to whom issued and the price or consideration received therefor, amount received, and from whom, in money, in labor, and in other property; and, if so requested, a detailed statement of the character, value, and situation of the property so received: Pa. Corps. 60.

“At least once a year every stock corporation shall file in its principal office a statement of its assets and liabilities and financial transactions for the previous year, containing a brief statement of the sources of its receipts and a classified list of its expenditures:” Wis. 1750.

Every foreign manufacturing corporation must, upon the written request of any creditor in this state, file with the secretary of state a statement showing the amount of stock, the amount actually paid in, and the names of the stockholders and amounts held by each, and the certified copy of its articles or organization, under penalty of forfeiting all right to transact business within the state: Wis. 1770. See Title III., and § 8403.

A statement of the amount of the capital stock subscribed, the amount of capital actually paid in, and the amount of indebtedness of the company, in a general way, shall also be kept posted up in like manner, which statement shall be corrected as often as any material change takes place in relation to any part of the subject matter of such statement: Minn. 2464.

Every corporation must annually give notice by publication of the amount of all existing debts; and for failure so to do, all the stockholders are jointly and severally liable for existing debts: Neb. 16,136. See § 8140.

So, once in six months it must publish a statement of the capital, amount paid in, and debts: Fla. 34,36.

“It shall be the duty of every corporation formed under this article, having a capital stock, to cause to be made in the first week in January and July in each and every year a full and particular statement of the affairs of said company, verified by the oaths or affirmations of its president and treasurer, or chief finance officer, which statement shall consist of a particular account of its assets and liabilities in minute details, calculated to the time of making up the statement as aforesaid. Each of the said statements so made up shall be recorded in a book kept in the principal office of the said corporation in this state:” Md. 23,73.

“The treasurer or cashier, or, in the absence of such officer, the person presiding over or directing the business of any corporation, shall annually make a return to the state comptroller, containing the name and residence of each shareholder, with the number of shares belonging to him, and the par and cash market value of such shares, and shall also state the whole amount of the capital stock of the corporation, and the amount actually paid in, and the real estate subject to assessment for taxes, and the personal estate of said corporation; and if such officer refuses or neglects to make such return, the corporation shall forfeit a sum not less than one hundred dollars nor more than one thousand dollars for each offence, to the use of the state, to be recovered in an action of tort:” Fla. 34,42.

NOTES. — <sup>a</sup>Of corporations “not required by law to make similar returns to some state officer.” and having a capital stock. <sup>b</sup>On the 15th of February or August, showing the condition of affairs on

the 1st day of December, or January, or June, or July, preceding. <sup>c</sup> Annually, in May. <sup>d</sup> Within twenty days after December 1st. <sup>e</sup> On January 1st. <sup>f</sup> Within sixty days from January 1st. <sup>g</sup> Within twenty days after September 1st. <sup>h</sup> Or the controller. <sup>i</sup> The report is filed with the state assessors of the district on or before March 1st. <sup>j</sup> Within twenty days after January 1st. <sup>k</sup> By December 8th. <sup>l</sup> Thirty days after the annual meeting. <sup>m</sup> Except railroads, banks, insurance, and loan and building associations.

**§ 8081. Reports to Stockholders.** The board shall furnish to each stockholder requiring it a true copy of such report, together with a list of the stockholders and their places of residence : W.Va. 53,46.

And as often as once in each year a true statement of the accounts shall be made and exhibited to the stockholders : Vt. 3295, 1884,105 ; Ct. 1953 ; Ark. 974.

At the annual meeting : Vt.

When five per cent (fifteen per cent : Col.) in value of the stockholders request the treasurer in writing for a statement of the affairs, it shall be his duty to make such statement under oath, embracing a particular account of all its assets and liabilities in minute detail, and deliver such statement to the person presenting the request within twenty days thereafter, and keep on file for six months thereafter a copy of such statement, which shall be open to the examination of stockholders : Md. 23,71 ; Col.<sup>a</sup> 268 ; Mon.<sup>a</sup> G. L. 472 ; Wy.<sup>a</sup> 524.

But he is not required to deliver such statement oftener than once in six months : Col., Mon., Wy.

So, the directors must present a report in writing of the situation and amount of business of the corporation when required by one third of the stockholders : Kan. 23,23 ; Tex. 587.

**§ 8082. Excuse for : Penalty.** (See § 8235.) The attorney-general, upon application by any corporation, and satisfactory proof that it has ceased to transact business, shall file a certificate of the fact with the secretary of state, and, on payment of a reasonable compensation for his services, shall give a duplicate certificate to the corporation ; and thereupon such corporation shall be excused from filing annual returns with the secretary of state, as now required by law, so long as its franchises remain unused : Me. 46,36.

Corporations doing business without the United States are required to make such report within twenty days after April 1st : N.Y. 1890,564,30.

And if any such corporation shall fail so to do, the (treasurer and : N.H.) directors shall be individually liable for all the debts and contracts of the corporation (1) then existing, or which shall be contracted until such return is made : N.H. 150,16 ; N.Y. ; Mon. G. L. 460 ; D.C. 567.

(2) That shall be contracted during the year preceding the time when such report is due, and thereafter until it is made : Col. 252.

But they are so liable only for failure to file with the county clerk, &c., as above required, not for failure to make publication : Mon.

(3) A money penalty on the corporation is imposed : Me. 46,32 ; Kan. 23,24.

Any director may exempt himself from such penalty by filing affidavit with the secretary of state and such report as he can make, within thirty days of the time the corporation report is required : N.Y.

Any president or secretary of such a corporation, who shall intentionally neglect or refuse to comply with the provisions of the preceding section, shall be liable for all debts of said corporation contracted during the period of such neglect. But no action for any liability so incurred shall be brought except within three years after the debt contracted shall become due and payable : Ct. 1938.

In case any association, corporation, or company heretofore created under or by virtue of any law of this state, shall have deemed it advisable to suspend its ordinary business



(except in case of insolvency or for want of funds to carry on the same), and is not now transacting business, or may have omitted to file some of the reports or statements of its condition or management required by law to be filed, such corporation or company shall not be deemed dissolved : N.J. 1890,217.

**§ 8083. State Reports.** (See also in § 8080.) The secretary of state shall publish, as an appendix to the session laws of each year, a statement of all the corporations organized under this act during the preceding year, containing in each case the name of the corporation, its principal business, the location of its principal business office, the amount of capital stock, the date of the filing of the preliminary certificate and of the granting of the final certificate of incorporation by the secretary of state, and any change of location or capital of any such corporation made during the preceding year : W.Va. 54,17.

It shall be the duty of the secretary of the commonwealth to prepare and publish, annually or with every edition of pamphlet laws, a certified list of all charters of incorporation filed in his office, and incorporated under the provisions of this act, stating the style, title, purpose, and location of every such corporation, and he shall prepare and publish a complete alphabetical index to the same : Pa. Corps. 62 ; N.J. 1889,111.

All corporations and joint stock associations must be registered in the state auditor's office before beginning business, with the amount of capital authorized and paid, names of officers, &c. : Pa. 1889,332,19.

The secretary of state shall, annually in December, cause an abstract of the annual returns of all corporations required by law to be made to him to be printed and laid before the legislature : N.H. 150,18. Copies of all printed reports must be sent to the state librarian : N.H. 148,20.

## **Art. 809. Amendments.**

**§ 8090. Of the Articles. (A) Method.** In most states, no change in any of the above matters (§ 8022) is valid unless so recorded, presented (§ 8021), [and published] (see § 8024) : Pa. Corps. 18-20 ; Io. 1065 ; Minn. 2458,2459 ; Neb. 16,133 ; Md. 23,47 ; Del. V. 17,147,11 ; Ky. 56,6 ; Mo. 2495 ; Tex. 571 ; Ariz. 237.

In case of a company created by special act, the amendments must be authenticated, as in the case of an original charter, and both this and the amendments must be so filed : Tex.

So, "amendments may be made to the articles of incorporation by supplemental articles, executed and filed the same as the original articles" (i. e. without any vote of stockholders) : Pa. Corps. 18-20 ; Mo. 2495 ; Tex. 571 ; Wash. 2422.

The stockholders by a majority vote may amend the articles of association in any respect which might lawfully have been made a part of the original articles : Mich. 4866 ; Io. 1065 ; Minn. 2459 ; Miss. 1884,86††. So, by a three-fourths vote : S.Dak. 1890,55. So, by a two-thirds vote : Minn. 3145 ; Kan. 23,6a ; Col. 1891, p. 92 ; Uta. 2273.

At a general or special meeting : Io., S.Dak., Col.

At a regular meeting : Minn., Col.

At a meeting held in accordance with the by-laws : Kan.

The amended articles must be executed (1) by the corporation and a majority of stockholders under seal and filed with the secretary of state : Mich.

(2) By the officers only : Io., S.Dak.

*Provided* such amendment does not alter the original purpose of incorporation : Col., Uta.

Notice of the meeting and its purpose as in [Art. 805] : Col.

Any corporation may alter or amend its articles by a vote of (1) three fourths of its stock at a special meeting (after three weeks' notice by publication: Fla.): Fla. 31,34; La.D. 687.

(2) Three fourths in number holding two thirds in value may file declaration of amendments with the judge of probate or secretary of state, who issues certificate accordingly: Ala. 1889,17.

But not to alter powers given similar corporations at such time of amendment, or decrease its stock below the minimum: Ala. See § 8121.

When any amendment or alteration of the charter of any corporation shall be made, if it be not otherwise specially provided in the resolution making such alteration or amendment, it shall not become operative unless within six months after its passage it shall be accepted at a meeting of said corporation, legally warned for that purpose, and unless an attested copy of said acceptance shall be lodged on file in the office of the secretary of this state, to be recorded by him in a book kept for that purpose; and such acceptance shall operate to make the original charter, and all resolutions amending and altering the same, subject to amendment, alteration, and repeal, at the pleasure of the general assembly: Ct. 1911.

Notice of applications to the legislature to amend charters must be signed by the principal officer and a majority of the directors, or by the persons making application if individuals, setting forth the nature of the alterations, and published in a newspaper of the county where the business is carried on, or of Detroit if the business be not local or is in the Upper Peninsula: Mich. 4902-3.

Every corporation desiring a [renewal, see § 8014] or amendment of its charter, shall make publication as above, setting forth at length in such publication the nature and extent of the amendment or amendments desired, and the governor (with the advice of the attorney-general: Miss.) may grant the same, to be incorporated in the original charter: Pa. Corps. 18-20; Miss. 1029; and in case of renewal merely, it shall be sufficient for the governor to give a certificate that the original charter is renewed, under the great seal of the state: Miss.

But only if he deem such alterations "lawful and beneficial, and not injurious to the community": Pa. Corps. 20.

The publication is in two newspapers of the county, and for three weeks: Pa. Corps. 19.

Any corporation may, at any meeting, by a vote of two thirds the outstanding stock, unless a greater vote shall be required in its articles, amend its articles of organization so as to modify or enlarge its business or purposes, change its name or location, increase or diminish its capital stock, change its officers or the number of directors, or provide anything which might have been originally provided in such articles. Such amendment must be adopted in accordance with the articles, if a mode of amending have been therein prescribed. A certified copy of the amendment must be recorded with the original articles and with the secretary of state: Wis. 1774.

A corporation may, by resolution at any regular meeting of the directors, adopt new articles, altering the original articles in respect of the name, nature of business, principal place of business, amount of capital stock, and how to be paid in, highest amount of liability or indebtedness, number of directors, and number and amount of shares: which new and amended articles must be duly recorded and published: Minn. 2458.

Any charter, heretofore or hereafter granted to a company under the provisions of this section by a court or judge thereof in vacation, may be altered or amended, or the corporate name of the company be changed, by the said court, or the judge in vacation, on the application of the company authorized by a majority of the stockholders in general meeting. And any charter heretofore or hereafter granted by the general assembly, which under the provisions of this section might have been granted by a court or

judge, may, in like manner and on like application, be altered or amended, or the corporate name of the company changed, by the circuit court of the county, or circuit or corporation court of the corporation, wherein the principal office of the company is, or by the judge of such court in vacation. Such alteration, amendment, or change shall be recorded by said clerk, and in the office of the secretary of the commonwealth, as hereinbefore provided for recording charters, and shall be as effectual and legal, from that time, as if originally a part of said charter. And it shall not be lawful for the general assembly to grant relief, or to incorporate any company, or to alter or amend the charter of any corporation provision for which is made in this section, unless application shall have been first made to such circuit or corporation court, or the judge thereof in vacation, and refused : Va. 1145.

Any corporation organized for manufacturing, mining, insurance, or "for any other purpose or business useful to the public for which a firm or copartnership may be lawfully formed in this state," may, by resolution concurred in by a majority of all the stockholders representing a majority of the stock, at a meeting specially called for the purpose of which all stockholders shall have had notice, agree to and adopt a new agreement so as to enlarge or diminish the objects or purposes within the limits above specified for which such corporation may have been organized ; or so as to increase or diminish the number of shares or its stock by consolidating or subdividing the same, but so that in no case shall any fractional share or shares of unequal value be created : W.Va. 54,10.

Any corporation which may desire to change its name, increase its capital stock, or obtain any powers granted herein, shall have the right to do so, by the board of directors of said corporation copying said amendment, and making an application in these words :

"State of Tennessee. — Act of Incorporation.

"We, the undersigned, comprising the board of directors of (here insert the name of the corporation), apply to the state of Tennessee, by virtue of the general laws of the land, for an amendment to said charter of incorporation, for the purpose of investing said corporation with the power (here state the clause in the general law aforesaid which is desired as an amendment, or if it be simply to change the name, so state the fact).

"Witness our hands the —— day of ——."

(To be signed by the directors) : Tenn. 1695.

Any corporation may amend its articles of association or certificate of incorporation by a majority vote of its board of directors or trustees, and by a vote or written assent of the stockholders, representing at least two thirds of the capital stock of such corporation ; provided, that the time of the existence of such corporation shall not be by such amendment extended beyond the time fixed in the original articles of certificate of incorporation ; provided further, that nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by reason that such certificate does not set forth the matters required to make the same valid as a certificate of incorporation at the time of its filing. A notice of the intention to make the amendment shall be advertised for thirty (30) days in some newspaper published in the town or county, or city and county, in which the principal place of business of the association or corporation is located ; and provided also, that nothing in this section shall be construed to authorize any corporation to diminish its capital stock : Cal. 5362.

The directors of any corporation may file supplementary articles of incorporation at any time when a three-fourths vote of all the stock subscribed shall so determine, for the purpose of engaging in any business cognate or germane to the original objects or primary purpose of said corporation not in violation of law, or at any time when a

seven-eighths vote of all the stock subscribed shall so determine, for the purpose of engaging in any new enterprise or pursuit not in violation of law, or for the purpose of changing any part of their road or canal, or either terminus, or both, when not in violation of law, or any contract entered into by said corporation; the directors shall cause a notice to be published of the filing of such supplementary articles, setting forth the object of the same: Ore. 3238.

Whenever the holder or holders of one third in amount of the stock subscribed, issued credited to the holders thereof, or outstanding, as shown by the stock-books of any corporation created under the laws of the state, shall in writing request the president or other head officer thereof to call a meeting of the stockholders thereof for the purpose of considering a proposed amendment or amendments to the articles of incorporation of such corporation, setting forth in such written request the substance of each proposed amendment or amendments, such president, or other head officer, shall without unnecessary delay call a meeting of the board of directors or trustees of such corporation, as the case may be, and present such request to such board, and thereupon it shall be the duty of such board of directors or trustees to call a special meeting of the stockholders of such corporation, to be called for the purpose of considering said proposed amendment or amendments to its articles of incorporation, for a time not less than thirty nor more than sixty days thereafter; which said meeting shall be called in the manner provided, and shall be held at the place appointed by the said board, and designated in such notice: Col. 1891, p. 92.

Any corporation incorporated under the laws of the territory of Dakota, or that may hereafter be incorporated under the laws of the state of South Dakota, may amend its articles of incorporation in the following particulars at any general meeting provided for in said articles of incorporation or in the by-laws of the corporation. It may change the corporate name, may change the corporate seal to conform with the change of name, may change the place where the principal business shall be transacted to any other place in this state, and may change the place of holding the meetings of said corporation to any other place within this state. The foregoing amendments can only be made by a vote of three fourths of the share or stock holders, who shall represent at least two thirds of the stock of the corporation: S.D. 1890,56,1.

**(B) Formalities.** A copy of such amendment must be filed with the secretary of state or the county clerk, or both, and notice published in states where notice is required, as in § 8024: Minn.; Kan.; Cal.; Col.; Fla. 34,34; La.

Notice of such change shall be immediately thereafter published by the president, or other officer of the corporation, for three or six successive weeks, in some newspaper printed and published in the county: Ill. 32,54; Kan. 23,13.

The president or secretary of the corporation shall file with the secretary of state an affidavit, setting forth the name adopted, or the number of directors or trustees fixed, together with the date at which such change in name or number of directors or trustees was voted by the stockholders of such corporation: Kan. 23,12.

So a sworn statement of the meeting, vote, etc. must be filed with the secretary of state and the county recorder: N.Y., N.J.

A copy of such resolution acknowledged by such majority of the stockholders shall be delivered to the secretary of state, who shall thereupon issue a certificate as in § 8026, and thenceforth such corporation shall be subject to such new agreement and certificate: W.Va. 54,10.

The amendments take effect from the date of such filing, and a certificate by the secretary of state is evidence thereof: Tex. 572; Cal.

This instrument shall be probated and acknowledged as hereinafter provided, and the certificate of registration given by the secretary of state, under the great seal of the state, shall complete the amendment to said act of incorporation, and the validity thereof shall not in any legal proceeding be collaterally questioned: Tenn. 1696.

(C) **Effect.** That nothing herein shall affect any suit or proceeding, at the time of filing such amended certificate, pending against said corporation, or impair any rights of action accrued against the stockholders, corporators, or directors : N.J. Corp. 110.

Nothing in this act contained shall be construed to repeal or authorize the repeal of any of the requirements of restrictions of the act of April 29th, 1874, and its supplements, nor to dispense with any of the provisions of the said act, nor to authorize the right of eminent domain to be given to any corporation by amendment of its charter, nor to permit any change in the objects and purposes of such corporation as shown by its original charter : Pa. Corps. 21.

Such change of name, place of business, enlargement or change of object for which such corporation was formed, increase or decrease of capital stock, or increase or decrease of number of directors, managers, or trustees, or consolidation of one corporation with another, shall not affect suits pending in which such corporation or corporations shall be parties, nor shall such changes affect causes of action, nor the rights of persons in any particular : nor shall suits brought against such corporation by its former name be abated for that cause : Ill. 32,56.

And provided further, that any corporation, other than corporations for manufacturing purposes, availing itself of, or accepting the benefits of, or formed under, this act (except the mere change of name) shall be subject to the general laws of this state now in force, or which may hereafter be passed, regulating corporations of like character : Ill. 32,53.

No amendments or changes violative of the constitution or laws of this state, or of any of the provisions of this title, shall be of any force or effect : Tex. 573 ; Ariz. 237 ; and no amendments or changes shall be of any force or effect which are not germane to the original purposes or charter of incorporation, and calculated to carry out and effect the same : Tex. 573.

If the amendments, being fundamental, are accepted, any minor, married woman, or dissenting stockholder shall cease to be a stockholder, and the corporation must pay to such withdrawing stockholder the par value of its stock, if it is worth so much ; if not, then so much as may be its real value in the market on the day of withdrawal ; but claims of all creditors are to be paid in preference : Tenn. 1711.

The alteration and amendment shall be binding on all the stockholders unless those dissenting thereto shall, within thirty days after knowledge that the same has been made, enjoin the corporation or association from acting under such alteration : Miss. 1884,86,1.

(D) **Correction of Errors.** The directors of any corporation, in whose original certificate any matter required to be therein stated has been omitted, may make and file an amended certificate : N.Y. 1890,563,5.

Whenever the original certificate of incorporation, filed by any association under any general act for the formation of incorporated companies, is or shall be defective by reason of the omission of any matter required by law to be therein stated, or by reason of defective proof or acknowledgment, or by reason of the same not having been filed in all the offices required by law, the corporators or directors of such association are hereby authorized to make and file an amended certificate, in conformity with the law under which such association was or shall have been organized, and upon such filing and upon due recording of such amended certificate, if required by law, said association shall be deemed and taken to be and to have been a corporation from the time of filing such original certificate : N.J. Corp. 109.

So, when defective by reason of the object being for a purpose not contemplated in the general law existing at the time, all the stockholders may make such new certificate : N.J. 1887,123.

The directors of any corporation organized under any general or special act for the formation of corporations, in whose original certificate of incorporation any informality

may exist by reason of any omission of any matter required to be therein stated or any mistake therein made, are hereby authorized to make and file an amended certificate of incorporation, to conform to the general act, or to correctly express the intention of the parties thereto, and upon the making and filing of such amended certificate the said corporation shall, for all purposes, be deemed and taken to be a corporation from the time of the filing of the original certificate. Such amended certificate shall be executed and filed in the same manner as the original certificate: N.M. 1889,74,1.

§ 8091. **Removal.** A corporation organized under general laws, or created by special charter, for the purpose of carrying on a mechanical or manufacturing business in a city or town named in its organization or charter, may extend or remove its business, or any part thereof, to any other city or town in this commonwealth, and may purchase, hold and convey so much real and personal estate in such other city or town as may be necessary for the purpose of carrying on its business therein: Mass. See Title III.

Any joint stock corporation may remove its place of business from one town to another town in this state (by a two-thirds vote in number and interest of the stockholders: Ct.), but its president and secretary shall procure from the town clerk of the town from which it shall remove a certified copy of the record in said town of its articles of association, and all other records showing the state of its affairs, attach thereto their certificate that such corporation has thus removed, and immediately on such removal leave such copy and certificate in the office of the town (county, in Arkansas) clerk of the town to which said corporation is removed, which shall be recorded by him at full length; and said president and secretary shall cause a like certificate to be deposited with the secretary of this state, which shall be recorded by him; and within ten days (immediately: Ark.) after such removal, shall cause a copy of such certificate to be published in a newspaper published in the county in which such corporation shall be located; and in case of removal from one county to another, said copy shall be published in one newspaper in each of said counties: Ct. 1957; Ark. 990.

No bank, savings bank, insurance company, or trust company, heretofore incorporated, shall change its location from one town to another, except by act of the general assembly: Ct. 1941.

In other states, a corporation<sup>a</sup> may remove its location or principal place of business to any other place within the state (1) by a two-thirds vote of the board of directors: N.J. Supp. Corps. 1.

(2) By a two-thirds vote of all the stock at a general or special meeting (in the same manner as in the case of change of name, see § 8075: Ill.): Ill.<sup>a</sup> 32,50,3; N.Dak. 1890,49.

(3) By a majority vote of all the stock, upon petition of one quarter: Pa. Corps. 75,76.

A certificate of such removal must be filed with the secretary of state: N.Y., N.J., Ill., N.Dak.

And with the county recorder: Ill.

The stockholders may, (1) by a majority vote of the stock, change its general place of business: Ore. 3237.

By written consent of two thirds of the stock: N.Y. 1875,611,31.

(2) Of three fourths: N.Dak.

Notice is necessary by three or four weeks' publication: Ill. N.Dak.; and thirty days by mail or service: Ill. N.Dak.

Every corporation that has been or may be created under the general laws of this state may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state. Before such change is made, the consent in writing of the holders of two thirds of the capital

stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published at least once a week for three successive weeks in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it: Cal. 5321; Ida. 2608.

It may remove its principal place of business to some other place within the same county after publication once a week for four weeks: Nev. 824; Wash. 2444.

Any corporation may remove its principal place of business into some other county, upon filing a certified copy of the articles with the county clerk of such county: Wis.; Nev. 824; Wash.; Mon. 490.

And giving notice by four weeks' publication: Mon., Wash.

No corporation shall, by virtue hereof, change its place of business from any town, county, or municipality where such town, county, or municipality, or any of the inhabitants thereof, or any person or persons interested therein, shall have donated or in any manner contributed any money or other valuable thing to induce such corporation to locate in such town, county, or municipality. The provisions of this act in reference to the consolidation of corporations shall only apply to corporations of the same kind, engaged in the same general business, and carrying on their business in the same vicinity, and no more than two corporations now existing shall be consolidated into one under the provisions hereof: Ill. 32,50.

No change of location beyond the limits of the county shall be valid until the articles and all amendments have been recorded in the registry of deeds for such county: Wis. 1774.

NOTE. —<sup>a</sup> Whether created by special charter or otherwise: N.J.; Ill. 1889, pp. 95-97.

**§ 8092. Change of Name.** A corporation at a legal meeting of its stockholders may vote to change its name and adopt a new one: Me. 46,6; Kan. 23,11; W.Va. 53,12; Mo. 2508; and when the proceedings of such meeting, certified by the clerk thereof, are returned to the office of the secretary of state to be recorded by him, the name shall be deemed changed; and the corporation under its new name has the same rights, powers, and privileges, and is subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name: Me., Mo.; but no action brought against it by its former name shall be defeated on that account, but on motion of either party the new name may be substituted therefor in the action: Me.

Any joint stock corporation, having voted to change its corporate name, may apply to the superior court (supreme: N.Y.) for the county in which it is located to have such change made, first giving notice of such intended application by advertisement for two (for six weeks: N.Y.) weeks consecutively (in a newspaper published in Hartford or New Haven: Ct.; in the state paper: N.Y.), and in a newspaper, if there be one published in the town in which the corporation is located (in every county where it has an office: N.Y.); and said court may change said name as prayed for, and upon filing in the office of the secretary of this state a certified copy of the order of the court, and a like copy with the town (county: N.Y.) clerk of the town in which the corporation is located, which shall be recorded by said secretary and said town clerk, the name of such corporation shall thereafter be as decreed by said court; but no right existing at the time of such change in favor of or against such corporation shall be affected thereby: Ct. 1949; N.Y. 1870,322.

There must be a vote of directors also: N.Y. 1891,38.

In other states a corporation<sup>a</sup> may change its name (1) by a two-thirds vote of the directors: N.J. Supp. Corps. 2.

(2) By a two-thirds vote of all the stock, at a special meeting<sup>b</sup> : Ill.<sup>a</sup> 32,50,2 ; Uta.<sup>b</sup> 2273 ; Wy.<sup>d</sup> 519 ; 1890,7.

Or at a regular meeting : Ill. 32,53.

(3) By a vote of its stockholders, cast as the by-laws may direct : Mo. 706 ; Fla. 34,3.

(4) By a vote of two thirds of the stock present and voting at a special meeting, and authority of the commissioner of corporations given after public notice : Mass. 1891,360.

(5) By simple vote of directors : Ind.<sup>e</sup> 1891,48.

A certificate of such change must be filed with the secretary of state : N.J., Ill., W.Va., Mo., Fla.

And with the recorder of deeds for the county : Ill.

When the corporate name shall be changed, the secretary must publish a notice thereof three weeks in a newspaper near the place of location : Wis. 1774.

The secretary shall issue, under his hand and great seal of the state, a certificate reciting the resolution and declaring that the corporation is to be thereafter known by the new name so adopted ; and such certificate shall be evidence of the change of name therein specified. Notice of every such change of name shall be published by such corporation, in some newspaper of general circulation in the county where the principal office of such corporation is, once a week for four successive weeks immediately thereafter : W.Va. 53,12. Compare § 8004.

§§ 17-20 of c. 54 apply to certificates of such change : W.Va. 53,13.

No liability of the corporation is impaired, and no suit abated by reason of such change : N.J. Supp. Corps. 3 ; Ill. 32,56 ; W.Va. 53,14 ; Mo. ; Fla. Compare § 8090.

No name shall be so assumed similar to or liable to be mistaken for the name of any other state corporation without its consent : Ill. 32,50.

NOTES. — <sup>a</sup> Whether created under special charter or otherwise : N.J. <sup>b</sup> Notice of the meeting must be given by thirty days' mail and three weeks' publication in the newspaper in or near the county where the principal place of business of the corporation is located : Ill. <sup>c</sup> Except banks, trust companies, and insurance companies : N.Y. <sup>d</sup> Or for increasing stock : see § 8120,2. <sup>e</sup> Of corporations existing before 1850.

**§ 8093. A Change in the Number of Directors** is made in the same way in all respects : Ill., Mo., Uta., Fla., Kan.

But not to less than 5, nor more than 11 : Ill. Not less than 3 : Fla.

Not less than 3 nor more than 13 : Mo., Tex., Uta.

So, 3 to 24 : Kan. Compare § 8043.

So, a consolidation : Ill., Uta.

A subsequent act provides for changing the number of directors from an even to an odd number, but at a special meeting called upon request of a majority of the stock : Ill. 32,59-60.

A company may, by a vote of a majority of its stock, at any regular meeting of the company, increase the number of directors to any number, as above limited, not greater than fifteen, or decrease the number before or after such increase to any number not below five : N.Y. 1890,561,21 ; 1890,23 (3 & 13)<sup>b</sup> ; Pa. Corps. 36 ; O. 3267.

To any number not less than three : Pa. 1885,166<sup>e</sup>.

All corporations heretofore created and now in existence under any law in (of) this state, are hereby authorized to increase the number of directors or trustees of any such corporation : Kan. 23,20 ; Tex. 582.

All private corporations may increase or diminish the number of their directors, (1) to any number not less than five, upon the vote of the stockholders representing three fourths of the capital stock ; Tenn. 1702.



(2) Upon a majority vote of stock at a general or special meeting, called (with thirty days' notice personal : N.Y., Ala. ; and by four weeks' publication : Ala.): N.Y. 1891,57; Ala. 1680; Pa. Corps. 23.

(3) To any number not less than three, upon written assent of two thirds of the stock : N.J. 1888,22.

(4) Not above or below the legal number (§ 8043): N.Y.

The number of directors or managers shall not be increased or diminished, or their term of office changed, without the consent of the owners of a majority of the shares of stock : Ill. 32,6.

To increase or diminish, by vote of its stockholders cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than thirteen : Tex. 575.

At any time during the existence of the corporation, the number of the directors may be increased, in corporations for profit, by a majority of the stockholders of the corporations, to any number not exceeding eleven, who must be members of the corporation, whereupon a certificate stating the number of directors must be filed, as provided for the filing of original articles of incorporation : Ida. 2579.

NOTES. — <sup>a</sup> “Unless otherwise authorized by the charter.” <sup>b</sup> Or at a special meeting called with notice specifying such purpose.

**§ 8094. Change of Business.** In the same way the company may “enlarge or change the object for which it was formed :” Ill. 32,50.

The purpose for which any such corporation may be established may be changed by the stockholders, so as to specify any other lawful business in this state allowed by the provisions of [§ 8010]; but before it shall commence business under amended articles, they shall be subscribed by stockholders holding at least two thirds of the whole stock, certified to, published, and recorded as provided for the original articles : Ct. 1951.

So, the change must be authorized by a vote of two thirds of all the stock : N.J. Corps. 33.

Or it is sufficient if the stockholders present at a meeting called for the purpose unanimously consent : N.J.

The business may be extended to any other business open to corporations, or changed in the same manner as the increase or decrease of capital stock is made, and with like result of bringing the company under the general act (compare Art. 812) : Mon. G. L. 467,9; Wy. 519; 1890,7; D.C. 585,587.

It may also extend its business to any other branch named in section [8010], subject to the provisions and liabilities of this chapter : Wy. 519; D.C. 585. And any existing company heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this chapter by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties, and liabilities of this chapter : Wy. 519; D.C. 587.

Every corporation may amend its articles of association by the specification of any other lawful business in which the stockholders may desire to engage, first causing such amendments, subscribed by all the stockholders, to be published, and the certificate signed and recorded as in [§ 8024] : Ark. 976.

**§ 8095. Changes in Stock.** Any corporation heretofore formed under the laws of this territory may, by and with the unanimous consent of its stockholders, in writing spread upon the records of such corporation, render its stock assessable under the provisions of this chapter. The board of trustees of any corporation heretofore formed under the laws of this territory, where such corporation desires to avail itself of the provisions of this chapter, shall file and have recorded in the office of the territorial secretary, and of the county clerk and recorder where the original articles of incorpora-

tion were filed, a certificate, duly acknowledged, as provided in cases of articles of incorporation, stating that the stock of such corporation has been rendered assessable, and thereafter the stock of such corporation shall be liable to assessments as provided in this chapter: Mon. G. L. 513.

§ 8096. **Validating Statutes.** The statute of 1891 provides that in any case where there has heretofore been any attempted formation and organization or renewal of any corporation under any general law, and articles have actually been adopted and signed, in which the business specified was a lawful business, and the persons have in fact proceeded as such corporation to transact such business, and in the pursuit thereof have, in good faith, received and transferred to or from such body corporate any property, such attempted formation or renewal is hereby legalized and declared valid notwithstanding the omission of any matter prescribed, and all conveyances in good faith and lawful formation are legalized; provided such corporation within ninety days from the passage of this act file its articles of incorporation, if not heretofore filed: Minn. 1891,45.

### Art. 810. Limited Companies.

§ 8100. **General Provisions.** Business corporations were in New York divided into two classes, one the full liability company, and the other the limited liability company: N.Y. 1875,611,33. This statute was repealed entirely by the general incorporation acts of 1890,564-567, but probably applies to most existing corporations.

So in other states there is a special statute for "limited liability companies:" La. 1888,36.

"Joint stock companies:" Pa., O.

Three persons<sup>a</sup> may form such partnership association for the purpose of conducting any lawful business or occupation<sup>b</sup> within the United States or elsewhere, with a principal office in this state, by subscribing capital thereto, which capital shall alone be liable for its debts: Pa. Joint Stock, 1; O. 3161a; La. 1888,36,1. They make a statement in writing setting forth the names and amount subscribed, the total amount of capital, and when and how to be paid, the character of the business, the name of the association, to which the word "limited" must be added, its contemplated duration (not over twenty years), and names of officers. Such statement shall be recorded in the office of the recorder of deeds: Pa., O.

Provision is made for full liability companies reorganizing as limited liability companies, when their debts and liabilities do not exceed the capital stock actually paid in and unimpaired, upon vote of a majority of all the stock at a meeting called for the purpose: N.Y. 1885,535. [Repealed; see above.]

NOTES. — <sup>a</sup> Not more than twenty-five: O. <sup>b</sup> Except for dealing in real estate or banking: O. Except "stockjobbing": La.

§ 8101. **Organization.** There shall be an annual meeting at which the board of "managers" shall be elected, who shall choose the chairman; the other officers shall be a treasurer and a secretary, and no debt can be contracted except by one or some of said managers, and no liability for an amount exceeding five hundred dollars shall bind the association unless signed by at least two managers: Pa. Joint Stock, 5; O. 3161e.

The board of managers are authorized to fix the salary and compensation of such officers, and the salary and compensation of other employees; but the president, secretary, and treasurer shall not receive as salary or compensation, after such association has been in existence five years, a sum in the aggregate greater than the amount of net earnings actually earned during the year preceding, unless by the consent of two thirds

of all the members of the association ; and the salary of the president, secretary, and treasurer shall be fixed for the ensuing year by a two-thirds vote of the value of interest present at the annual meeting of the association, and after the annual report has been made : Pa. 1889,208.

**§ 8102. Word "Limited."** In limited liability companies, the word "limited" must be added after the name of the company in every notice or advertisement or business document, bills, notes, checks, etc. ; and if it is omitted, every officer or director is personally liable for any indebtedness assumed or liability incurred during such omission, and the company and officers are further liable to a fine : N.Y. 1875,611, 35 & 36. [Repealed ; see § 8100.]

The word "limited" must always be employed in signs, advertisements, stationery, etc., or each person is liable as a partner for any damage or liability arising therefor : Pa. Joint Stock, 3 ; La. 1888,36,2.

But only each person participating in or acquiescing in such omission is liable : O. 3161c ; La.

**§ 8103. The capital** may be subscribed in real or personal estate, mines, or other property, at a valuation to be approved by all the members subscribing : Pa. Joint Stock, 14 ; O. 3161j,k.

*Provided*, that one half be paid in cash : O. 3161j.

It must be paid in, one third within thirty days of filing the articles, the other two thirds within twelve months : O. 3161a.

It may not be less than \$5,000 : La.

The capital stock of every such limited liability company shall be paid in, one half within one year and the other half within two years from the incorporation of the company, or such corporation shall be dissolved ; and certificate of such payment shall be recorded with the secretary of state in the county of the principal business office : N.Y.1875,611,37. [Repealed ; see § 8100.]

Every joint stock company issuing scrip or certificates for shares transferable at the will of the holder thereof, hereafter formed, shall, within thirty days after its formation, cause the articles of their agreement or association to be recorded in the office of the clerk of the court of common pleas of the county, with the names of the shareholders and the number of the shares held by each, in every county in which it has an office or agency at which its business is carried on : S.C. 1405.

Interests in such association shall be personal estate, and may be transferred as the by-laws prescribe : Pa. ib. 4 ; O. 3161 d.

**§ 8104. The Stockholders' Liability.** The members of such association are not liable except after execution returned unsatisfied against the company : Pa. Joint Stock, 2 ; O. 3161b. They are liable only to the extent of their stock not paid up : Pa. ; O. ; La. 1888,36,3.

Nor does any mere informality of organization render the charter null, or expose the stockholder to further liability : La. Compare § 8028.

In limited liability companies the stockholders are severally individually liable to creditors to an amount equal to the amount of stock held by them for all debts and contracts made by such company, until the whole amount of capital stock fixed has been paid in, and the certificate thereof recorded : N.Y. 1875,611,37. [Repealed ; see § 8100.]

No execution shall issue against any stockholder individually until execution has been returned unsatisfied against the corporation, and when a judgment is recovered against a stockholder all the stockholders contribute a proportionate share, and such stockholder has a right of action therefor : N.Y. 1875,611,37. [Repealed ; see § 8100.]

In actions by or against such companies so recorded, suit may be brought by or against them in the name of the company or association without naming the shareholders therein ; and in suits brought against any such company service upon the president, chief manager, purser, or other principal officer named in the said articles of agreement, shall be good service upon each and every one of the said company or association at that time recorded as shareholders therein, or who were so at the time the cause of action arose, and no change or transfer of the shares pending the said suit shall cause any abatement thereof : S.C. 1406.

All unincorporated associations may be sued and proceeded against under the name and style by which they are usually known, without naming the individual members of the association : S.C. 1410.

Process served on any agent of any unincorporated association, doing business in this state under the name and style by which it is usually known, shall be sufficient to make such association a party in any court of record in the county in which such agent may be served : S.C. 1411.

On judgment being obtained against such association under such process, final process may issue to recover satisfaction of such judgment, and any property of the said association, and the individual property of any copartner or member thereof, found in the state, shall be liable to judgment and execution for satisfaction of any such judgment : S.C. 1412.

No transfer of stock or shares shall avail to discharge the shareholders transferring the same from liability to third persons for debts "contracted after such transfer," until it has been reported to the clerk of the court where any such company is recorded, and by him or his clerk been entered in a column to be kept for that purpose, annexed or in connection with the list of shareholders previously recorded : S.C. 1407.

The provisions of the foregoing sections shall not apply to companies chartered by act of the general assembly : S.C. 1409.

The term "stockholder," as used herein, applies not only to such persons as appear by the books of the corporation or association to be such, but also to every equitable owner of stock, and also to every person who shall have advanced instalments or purchase money of any stock in the name of any minor, while such person remains a minor, to the extent of such advance, and also to every guardian or other trustee who shall voluntarily invest trust funds in such stock ; but the trust funds in the hands of such guardian or trustee are not liable by reason of any such investment, nor is any minor liable until thirty days after coming of age : N.Y. 1875,611,37. (Repealed ; see § 8100.)

§ 8105. **Powers.** Real estate may be owned or purchased in the association name, and the association may sue and be sued in such name in the county where it has its principal office, by service upon any agent, clerk, or manager. Pa. Joint Stock, 15 & 16 ; O. 3161b.

It is not lawful for such association to loan its credit or capital to any member : Pa. ib. 7 ; O. 3161g ; and for such loan to any other person a majority of the shareholders must consent : Pa.

Profits may from time to time be divided in such manner and in such an amount as a majority of its managers may determine, but not to diminish or impair the capital, and any one consenting to such dividend is liable to the amount of such diminution to the persons injured thereby : Pa. ib. 6 ; O. 3161f.

Such association may use a seal to execute deeds : Pa. ib. 11.

Conveyances are made by the chairman and secretary : O. 3161m.

§ 8106. **Dissolution.** Special provision is made for the dissolution and winding up of such associations by three liquidating trustees : Pa. Joint Stock, 8 to 10 ; O. 3161h,i.

**§ 8107. A Co-operative Business Corporation** is a corporation formed for the purpose of conducting any lawful business, and of dividing a portion of its profits among persons other than its stockholders. Co-operative business corporations shall be formed under and governed by the civil code of this state, and when so formed may in their by-laws, in addition to the matters enumerated in [§ 8071], provide :

(1) For the number of votes to which each stockholder shall be entitled ; and,

(2) The amount of profits which shall be divided among persons other than stockholders, and the manner in which and the persons among whom such division shall be made : Cal. 1877-8,883.

**§ 8108. Corporations without Capital Stock.** Any number of persons not less than three can associate for any lawful purpose where no capital stock is created ; and, being so associated, shall be a body politic and corporate, and may purchase, hold, and convey real and personal estate the annual income from which shall not exceed five thousand dollars ; but before any such association shall be entitled to the privileges herein granted, it shall lodge with the secretary of this state a copy of its articles of association, attested by its presiding officer and secretary, and cause them to be recorded in the records of the town where such association is situated, and no subsequent alteration or amendment of its articles of association shall take effect until it is so attested, lodged, and recorded ; and the general assembly may at any time rescind the powers of any such association, and prescribe the mode of settlement of its affairs : Ct. 1907. They may raise money of the members in any manner provided in the articles or by-laws : N.H. 147,9. This class of incorporations is not included in this work. See § 8499.

#### **Art. 811. Payment of Stock.** (Compare § 8034.)

**§ 8110. Preliminary Payment required.** (A) No association of persons, under this chapter, hereafter organized, shall commence business until its capital stock shall be subscribed for by *bona fide* subscribers, and at least twenty per cent thereof paid for in cash, nor until the requirements of the next succeeding section of this chapter shall have been complied with ; and in case any portion of the balance of said stock shall be paid for in property, real or personal, such property shall be estimated for such purpose at the actual value thereof : Ct. 1947. See § 8024.

(B) Before the corporation contracts debts (Vt.), or transacts business with others than members (Wis., Ga.), one half the stock must be paid in : Vt. 3291. One half must be subscribed, and twenty per cent paid in : Wis. 1773 ; ten per cent paid in : Ga. 1676.

(C) Unless specially authorized (Minn.), no corporation can issue shares for a less amount to be actually paid in on each share than the par value of the shares first issued : Minn. 3130 ; S.C. 1886,288,14.

(D) At the time of subscribing for stock, the laws of several states require a certain amount to be paid cash down ; as, in Missouri, five per cent : Mo. 2494.

Ten per cent : N.Y. 1890,564,41 ; O. 3243.

(F) As soon as fifty per cent of the capital stock is subscribed, and ten per cent of the capital stock is paid, the subscribers of the articles of incorporation shall so certify in writing to the secretary of state, for the purpose of choosing not less than five nor more than fifteen directors, who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified ; and the incorporators of the company shall be liable to any person affected thereby, to the amount of any deficiency in the actual payment of said ten per cent at the time of so certifying : O. 3244.

(G) Before the articles of incorporation of any corporation referred to in section 8010 are filed, there must be paid for the benefit of the corporation, to a treasurer

elected by the subscribers, ten per cent of the amount subscribed : W.Va. 54,7 ; Cal. 5294 ; Fla. 34 39.

So, twenty per cent : S.C. 1886,288,5. See §§ 8023,8022 (5) & (16).

No stock shall be regarded as taken, or the person subscribing therefor considered entitled to the same, until the first instalment is paid thereon : N.Y. ; W.Va. 53,26.

**Penalty.** If any obligation be contracted in violation of this section, the corporation has no action thereupon, and its stockholders are personally liable : Wis. See § 8140.

**§ 8111. Certificate Filed.** (See also § 8025.) The directors and treasurer or president of every corporation (except banks : N.H.), (whose object is a dividend of profits : N.H.), (within thirty days : N.H., N.J., Md., Mon., Wy., D.C.) after the whole amount (the first instalment : Mon.) of the capital stock fixed and limited by the company shall have been paid in, shall make and subscribe a certificate under oath, stating that the amount of the capital so fixed and limited has been fully paid in, and cause the same to be recorded in the office of the clerk of the city or town<sup>d</sup> where the corporation has its principal place of business : N.H. 149,14 ; Vt.<sup>a</sup> 3253 ; N.Y.<sup>a</sup> 1890,564,57 ; N.J.<sup>a</sup> Corps. 30 ; Md.<sup>b</sup> 23,65 ; Del.<sup>c</sup> V. 17,147,20 ; Col.<sup>cd</sup> 248 ; Mon.<sup>a</sup> G. L. 459 ; Wy.<sup>e</sup> 514 ; D.C.<sup>e</sup> 563 ; and if they neglect so to do, (1) they shall be liable for all the debts of the corporation contracted after the expiration of the said thirty days and before such certificate shall be so made and recorded : N.H. ; N.J. Corps. 32 ; Del.

(2) The stockholders are liable ; see § 8140 : N.Y.

So, certificates of any increase of stock must be so filed : Vt. ; N.J. Corps. 31 ; Del.

The above certificate must specify what property, if any, was received in payment for subscriptions, other than cash : Md. See § 8114 (B).

The articles of association must have been published, and a certificate of the purpose of incorporation, amount of stock, amount paid in, names of stockholders, and number of shares by each respectively owned, is made and signed by the president and directors and deposited with the secretary of state, and a copy thereof recorded with the registry of deeds for the county : Minn.\* 2652. See Title III.

Within thirty days after the payment of any instalment called for by the directors of such corporation, a certificate thereof shall be made, signed, filed, and recorded as Art. 802 : Ark. 968.

Upon the delivery of the subscriptions to such officer or person, he shall require of the subscribers whose subscriptions are payable in money without the privilege of discharge in services, or labor, or property, the payment in cash of twenty per cent thereof ; and of the subscribers whose subscriptions are payable in money with the privilege of discharging the same in stipulated services or labor, or in the transfer or conveyance of property, contracts in writing signed by them expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or the transfer or conveyance of the property, at such times as the board of directors may appoint : Ala. 1663. But this is probably superseded by Ala. 1887,163.

NOTES. — <sup>a</sup> With the county clerk. <sup>b</sup> With the clerk of the court where the articles were filed. <sup>c</sup> With the register of deeds. <sup>d</sup> With the secretary of state [also]. <sup>e</sup> See § 8045, note 2.

**§ 8112. Payment for Stock.** (A) The directors may generally (subject to the above provisions) call in the subscription to the capital stock of such corporation by instalments, in such proportion, times, and places as they think proper : Ct. 1929 ; N.Y. 1890,564,43 ; Pa. Corps. 29 ; O. 3243 ; Ill. 32,7 ; Wis. 1754 ; Minn.\* 2655 ; Md. 23,75 ; Va. 1148 ; Ark. 970 ; Nev.<sup>a</sup> 811 ; Col. 241 ; Wash.<sup>a</sup> 2430 ; Wy. 508 ; N.M. 201 ; Mon.<sup>b</sup> G. L. 453 ; D.C. 560. See in Title III.

By giving such notice thereof (1) as the by-laws shall prescribe : Ct., Ark. ; or. in the absence of such by-laws, on such notice as they deem reasonable : Ct.

(2) Personally or by publication (once a week for four weeks : N.M. ; Nev. 811) : Wash., N.M., Nev.

(3) By publication, once a week for six weeks : Wy. 512. And compare § 8113.

(B) The stock is in other states payable at such times and in such instalments as may be determined by the by-laws : R.I. 152,3 ; Kan. 23,28 ; Tenn. 1705 ; Mo. 2498 ; Tex. 591 ; Nev. 1891,58 ; Uta. 2276 ; Wash. 2430 ; Fla. 34,14. And see note <sup>a</sup>.

Giving such notice as the by-laws prescribe : Wis., Ark.

So, all assessments or instalments of the stock of any stock corporation shall be levied by the directors in accordance with the provisions of the by-laws, but any assessment or instalment required to be paid shall be levied *pro rata* upon all the shares of such stock : Ill. 32,15 ; Col. 250.

An instalment of ten per cent on each share of stock shall be payable at the time of making the subscription, and the residue thereof shall be paid in such instalments, and at such times and places, and to such persons, as may be required by the directors of the corporation : O. 3243 ; W.Va. 53,25.

So, two dollars per share : Va. 1107.

So, five per cent ; and no subscription shall be received without such payment : Mo. 2494.

Ten per cent within one year, and the balance as called ; Wy. 512.

The capital stock so fixed and limited shall be paid in, one fourth thereof in one year, one fourth in two years, one fourth in three years, and one fourth, or the balance, in four years from and after the incorporation of said company, or such corporation may be dissolved ; provided, however, that it shall be lawful for the trustees, directors, or managers of any such corporation to collect and enforce the payment of all subscriptions to the capital stock as other debts are collected, after notice being given, as required by [§ 8113] ; and if suit shall be brought by the trustees, directors, or managers of any such corporation, against all delinquent stockholders, for the full amount of unpaid subscriptions, within four years from the incorporation of said company, such corporation shall not be dissolved ; and provided, furthermore, that the provisions of this section shall not apply to any homestead or building association : Md. 23,64.

The capital stock so fixed and limited shall be paid in, one half within one year, and the other half thereof within two years from the incorporation of the company, or such corporation shall be dissolved : D.C. 564.

**Assessments.** Such corporation, at its first meeting, or at any meeting called for that purpose, may assess upon each share such sums of money as they think proper, not exceeding in the whole the amount at which the shares were originally limited ; or such assessments may be made by the directors of the corporation ; and the sums assessed shall be paid to the treasurer within such times as are limited by the corporation or by the directors : N.H. 149,16.

The directors of every such company may, from time to time, assess upon each share of general stock such sums of money as two thirds of the stockholders in interest shall direct, not exceeding, in the whole, the amount at which each share shall be originally limited under [§ 8015] ; and such sums so assessed shall be paid to the treasurer at such times and by such instalments as the directors shall direct, said directors having given thirty days' notice of the time and place of such payment in a newspaper circulating in the county where such company is established : N.J. Corp. 27 ; Del. V. 17,147,19.

The trustees shall also have power, at such times and in such amount as they may from time to time deem the interests of the corporation to require, to levy and collect assessments upon the capital stock of the corporation, as herein provided. Notice of

each assessment shall be given to the stockholders personally, or by publication once a week for at least four weeks in some newspaper published in the county in which the principal place of business of the company is located : Nev. 1891,58.

No assessment shall be made or levied except by order of the board of trustees, concurred in by a majority of said board, and duly entered upon the records of the corporation : Mon. G.L. 498.

**California Code Provisions.** The directors of any corporation formed or existing under the laws of this state, after (except in Montana) one fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent, provided herein : Cal. 5331 ; Dak., Civ. C. 423 ; Mon. G.L. 496 ; Ida. 2614 ; Uta. 2374 ; Oka. 998.

No one assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for as follows : —

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock ; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in instalments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided : Cal. 5332 ; Dak. Civ. C. 424 ; Ida. 2615 ; Uta. 2375 ; Oka. 999.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper : Cal., Dak., Ida., Oka.

No assessment shall exceed five per cent in any case : Mon. G.L. 497. And see § 8001.

Not to exceed ten per cent a month : Wy.

No assessment must be levied while any portion of a previous one remains unpaid, unless : —

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined ; or (except in Montana).

3. The assessment falls within the provisions of either the first, second, or third subdivision above : Cal. 5333 ; Dak. Civ. C. 425 ; Ida. 2616 ; Mon. G.L. 497 ; Uta. 2376 ; Oka. 1000.

Every order levying an assessment must specify the amount thereof, when, to whom, and where payable : fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment ; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent : Cal. 5334 ; Dak. Civ. C. 426 ; Ida. 2617 ; Mon. G.L. 499 ; Uta. 2377 ; Oka. 1001.

Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form : —

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent, and advertised for sale at public auction, and, unless



payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

Cal. 5335 ; Dak. Civ. C. 427 ; Ida. 2618 ; Mon. G.L. 500 ; Uta. 2378 ; Oka. 1002.

The notice must be personally served upon each stockholder, or (except in Montana), in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and (in Montana, *or*) be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published (1) at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein ; (2) in Salt Lake City : Uta. 2379. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county (in the state capital : Ida) : Cal. 5336 ; Dak. Civ. C. 428 ; Ida. 2619 ; Mon. G.L. 501 ; Oka. 1003.

If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published a notice substantially in the following form :

(Name in full. Location of principal place of business.) Notice. — There is delinquent upon the following described stock, on account of assesment levied on the (date), (and assessments levied previous thereto, if any.) the several amounts set opposite the names of the respective shareholders, as follows : (names, number of certificate, number of shares, amount). And in accordance with law (and an order of the board of directors, made on the [date], if any such order shall have been made), so many shares of each parcel of such stock as may be necessary will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

Cal. 5337 ; Dak. Civ. C. 429 ; Ida. 2620 ; Mon. G.L. 502 ; Uta. 2380 ; Oka. 1004.

The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated : Cal. 5338 ; Dak. Civ. C. 430 ; Ida. 2621 ; Mon. G.L., 503 ; Uta. 2381 ; Oka. 1005.

The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale ; Cal. 5339 ; Dak. Civ. C. 431 ; Ida. 2622 ; Mon. G. L. 504 ; Uta. 2382 ; Oka. 1006.

By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or cost of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale : Cal. 5340 ; Dak. Civ. C. 432 ; Ida. 2623 ; Mon. G. L. 505 ; Uta. 2384 ; Oka. 1007.

On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction to the highest bidder, for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment: Cal. 5341; Dak. Civ. C. 433; Ida. 2624; Mon. G.L. 506; Uta. 2385; Oka. 1008.

The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation, on payment of the assessment and costs: Cal. 5342; Dak. Civ. C. 434; Ida. 2625; Mon. G. L. 507; Uta. 2386; Oka. 1009.

If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation, it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation: Cal. 5343; Dak. Civ. C. 435; Ida. 2626; Mon. G. L. 508; Uta. 2387; Oka. 1010.

All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting: Cal. 5344; Dak. Civ. C. 436; Ida. 2627; Mon. G.L. 508; Uta. 2388; Oka. 1011.

The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates: Cal. 5345; Dak. Civ. C. 437; Ida. 2628; Mon. G.L. 509; Uta. 2389; Oka. 1012.

No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew: Cal. 5346; Dak. Civ. C. 438; Ida. 2629; Mon. G.L. 510; Uta. 2390; Oka. 1013.

No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made: Cal. 5347; Dak. Civ. C. 439; Ida. 2630; Mon. G. L. 511; Uta. 2391; Oka. 1014.

The publication of notice required by this article may be proved by the affidavit of

the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are *prima facie* evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are *prima facie* evidence of the contents thereof: Cal. 5348; Dak. Civ. C. 440; Ida. 2631; Uta. 2392; Oka. 1015.

On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof: Cal. 5349; Dak. Civ. C. 441; Ida. 2632; Oka. 1016.

NOTES. — <sup>a</sup> In case the by-laws do not prescribe the mode thereof; see § 8071. <sup>b</sup> Not exceeding twenty per cent a month.

§ 8113. **Delinquent Stock.** The corporation may (A) sue for any instalment, tax, assessment, or payment due on the stock: Pa. Corps. 29; O. 3253; Ill.<sup>d</sup> 32,7; Wis. 1754; Minn. 3131; Del. V. 17,147,19; Va. 1127,1148; W.Va. 53,28; Tenn. 1705; Ark.<sup>a</sup> 970; Col.<sup>d</sup> 241; S.C. 1886,288,14; Miss. 1036.

Or it may (if the by-laws so provide: Ill., Col.), (B) declare a forfeiture of the stock: N.Y.<sup>a</sup> 1890,564,43; Kan.; Mo.; Tex.; Col.<sup>d</sup>; Mon.<sup>a</sup>; Wy.<sup>g</sup> 508; S.C.; D.C.; or (C) sell it, for such instalment, etc. unpaid after notice to the delinquent stockholder: N.H.<sup>c</sup> 149,17; Vt.<sup>h</sup> 3260; Ct.<sup>a</sup> 1929; N.J.<sup>b,c</sup> Corps. 28; Pa.; O.; Ill.; Wis.<sup>a</sup>; Minn.; Kan. 23,29; Md.<sup>e</sup> 23,70; Del.<sup>b,c</sup>; Va. 1128; W.Va. 53,29; Mo.<sup>a</sup> 2498; Tex.<sup>c</sup> 592; Ark.<sup>a</sup>; Nev. 811; Col.<sup>d</sup> 241; Mon.<sup>a</sup>; S.C.<sup>c</sup> 1886,288,14; Ala.<sup>c</sup> 1674; Miss.; Fla. 34,14; N.M. 201; D.C.<sup>d</sup> 560.

At public auction: Vt.; N.J.; O.<sup>e</sup>; Wis.; Del.; Va.; W.Va.; Ark.; Nev. 811; Wash. 2430; S.C.; Ala.<sup>c</sup>; Miss.<sup>d</sup>; Fla.; N.M.

Or private sale: S.C.

So, in other states, the mode of selling shares for the non-payment of assessments may be determined by the by-laws: Vt.; R.I. 152,3; Ill.; Minn.; Mich. 4861; Ore. 3222; Nev.; Wash.; Miss.; N.M.<sup>c</sup>; Del. 70,2. Compare § 8071.

The sale is made to the person who shall pay the amount due and expenses for the smallest number of the shares: Nev., Wash., N.M., Del.

Such notice (of sale or forfeiture) is by publication in the county where the delinquent stockholder, &c. resides or resided when he made the subscription: O., Del. In the capital: Fla.

For other states, see notes.

Or in the county where the corporation has its principal office, if such stockholder, &c. be out of the state: O.

"In the county where it is located:" N.H. 149,18; Ct.; N.J.; Wis.; Md.; W.Va.; Ark.; Nev.; Wash.; S.C.; Mon.; Ala.<sup>f</sup> It makes no difference that such stock is held by an assignee or transferee of the original subscribers: O.

Thirty days' personal notice: Ct., Ill., Wis., Kan., Del., Va., Ark., Tex., Ore., Col., S.C., Ala.

"In a newspaper:" Ct., Del., Ark., Va., Ore., Mon.

Three weeks' notice by advertisement: N.H.; Vt. 3261; N.J.; Fla.

So, four weeks: W.Va., Nev.

And notice by mail to the stockholder: N.J., Kan., Del., Tex., Col., S.C., Ala., Wash.

Six weeks: Mon. The sale is made at the office of the clerk of the corporation: Vt.; Nev. 1891,58; Wash. Sixty days' notice, personal or by mail: N.Y., Mo., Fla.

The residue, after deducting amount due on the stock and expenses, is to be paid to the owner: Vt., Ct., O., Ill., Wis., Minn., Va., W.Va., Ark., Col.

Only such number of shares "as may be necessary" are sold: N.H., N.J., Wash., Nev. And if the whole amount due is not realized, the corporation has an action against the owner for the balance: O.; Wis.; Va. 1129; W.Va. 53,30; Ark.; Miss.

With interest at ten per cent: W.Va.

Ten days' notice of the *sale*: Ala. And see note *f* and states so noted.

When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for non-payment, it may either forfeit the stock or recover the amount of the subscription, but it cannot do both: Dak. Civ. C. 397; Oka. 969.

Or it may, at its option, consolidate into as many par shares as the money paid by such defaulting subscriber will amount to, and issue to such stockholder a certificate therefor, and declare the fraction of a share remaining unpaid forfeited to the corporation: S.C. 1886,288,14.

If the owner of any share or shares, being present either in person or by proxy at the meeting when any assessment is voted, or being notified thereof by the treasurer or cashier by letter, shall neglect to pay the sum so assessed on his share or shares for thirty days after the time appointed for the payment thereof, the treasurer or cashier may sell at auction a sufficient number of his shares to pay all assessments then due from him, with necessary charges: N.H. 149,17.

That whenever the certificate provided for in § 10 of the act to which this is a supplement (§ 8022) shall contain a provision (which is hereby authorized to be inserted therein in reference to any company conducting mining operations as a part of its business that may be formed under the act to which this is a supplement) that the board of directors shall have full power to levy assessments on general stockholders until the stock of such stockholders shall be fully paid up; and then and in every such case no action of the stockholders of such company shall be necessary in order to impose, levy, and collect such assessments: N.J. Supp. Corps. 14.

Every corporation in this state shall have the power, whenever at any assessment sale of the stock of said corporation no person will take the stock and pay the assessment thereon, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this state which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid, and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the same as they may deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase, a majority of the remaining shares of stock in said incorporation shall be held to be a majority of the shares of the stock in said incorporated company, for all purposes of election or voting on any question before a stockholders' meeting: Nev. 805.

A subscription to the stock of a corporation about to be formed is to be held for the benefit of the corporation when it is formed, and may be enforced by it: Dak. Civ. C. 395; Oka. 967. See § 8033.

If any stockholder in any banking or other incorporated institution shall fraudulently remove or attempt to remove out of this state, any personal property which

may have been mortgaged or pledged thereto for the security of the stock in the same, or any liability to such corporation, or shall, without the written consent of the said banking or incorporated institution, sell the same, or any part thereof, or dispose thereof so as to impair the rights, interests, or remedies of such corporation with respect thereto, the stockholder so offending shall forfeit to the said institution all the stock in the same to which he may be entitled, and all his rights and interest as stockholder: and any property mortgaged by such stockholder to said corporation shall nevertheless be bound for any liability he may have incurred to said corporation, and his debts shall not be impaired by said forfeiture, and said forfeiture shall be made a part of the judgment or sentence of the court on conviction of such stockholder as aforesaid: Fla. 153,13.

NOTES. — <sup>a</sup> When the instalment has been unpaid for sixty days (after the stockholder has had notice: Wis.) <sup>b</sup> Provided two thirds of the stock shall so direct: N.J., Del. <sup>c</sup> After thirty days. <sup>d</sup> Twenty days after written demand, or thirty days after mailed notice. <sup>e</sup> Ninety days. <sup>f</sup> Of the sale. <sup>g</sup> Sixty days after personal demand or six weeks' publication. <sup>h</sup> See § 8045, note c. <sup>i</sup> Sixty days after the mailed notice.

**§ 8114. Money and Property Receivable in Payment; (A) Par Value Paid.**  
(See also Vol. I., § 452.)

No corporation shall sell or dispose of any of the shares of its capital stock at a price less than the par value thereof, except in the case of sales of shares at auction for non-payment of assessments: N.H. 149,8.

No corporation, unless specially authorized, shall issue any share for a less amount to be actually paid in thereon than the par value of the shares first issued or fixed by a change made under § 8120: Mass. 105,17; Minn. 3130.

(B) **Property Receivable.** By the laws of several states, no corporation can issue any stock except for money, labor, or property (estimated at its true money value: N.Y., Wis.) actually received by it, equal to the par value of such stock: N.Y. 1890,564,42; Pa. Corps. 32; Wis. 1753; Mo. 2499; Cal. 5359; Dak. Civ. C. 416; Ida. 2609,2637; 1891, p.172; S.C. 1886,288,33; Ala. 1891,91; Oka. 991.

Or equal to the amount credited as "paid up" on such stock: Ida.

So, in a few states, no bonds can be issued except as above: N.Y., Pa., Mo., Cal., S.C., Ala.

Nor in Wisconsin can it issue any bonds or other evidence of indebtedness except for money, &c. as above, actually received by it, equal to 75 per cent of the value thereof: Wis. 1753.

*Provided*, that any corporation whose stock or bonds have been, or shall hereafter be, admitted to the stock exchange of New York, Boston, Philadelphia, or Chicago, may sell such stock or bonds at the best price or prices current for the time being obtainable there: Wis.

All stocks and bonds issued contrary to this section, and all stock dividends or other fictitious increase of the capital stock or bonded indebtedness of any corporation shall be void: Pa., N.Y., Wis., Mo., Cal., Dak., Ida., Oka.

The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof; and no payment upon any subscription to or agreement for the capital stock of any corporation shall be deemed a payment within the purview of this chapter unless *bona fide* made in cash, or in some other matter or thing at a *bona fide* and fair valuation thereof: Me. 46,45.

When any commissioners or corporators to receive subscriptions to the capital stock of a corporation shall be satisfied that any subscription is not made in good faith, they shall disallow it, and return to the person subscribing such instalment whatever may have been paid by him: Ct. 1918.

Nothing but money shall be considered as payment of any part of the capital stock of any company organized under this act, except as hereinafter provided for the purchase of property : N.J. Corps. 54 ; Del. ; Ala. 1662 ; Fla. 34,39 ; D.C. 565.

The directors of any company incorporated under this act may purchase mines (real estate : Pa.), manufactories (patent rights : Pa.), or other property necessary for their business (or the stock of any company owning mining or manufacturing materials so necessary : N.J.), and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payments under any of the provisions of this act : N.J. Corps. 55,1889,265 ; Pa. Corps. 32 ; Del. V. 17,147,30 ; Col. 251 ; Mon. G. L. 458 ; Wy. 513 ; and said stock shall have legibly stamped upon the face thereof the words "issued for property purchased : " N.J. ; in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash paid in to the company, but shall be reported in this respect according to the fact : N.J., Pa., Col.

Preferred stock, etc. may be thus issued. See § 8130.

Where the amount of the capital stock of any corporation which may be formed under the provisions of this act consists of the aggregate valuation of property of mining claims, for the working, development, management, use, sale, or exchange of which such corporation shall be formed, no actual subscription in money to the capital stock of such corporation shall be necessary ; but each owner of such property shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the fair estimated cash value of so much of said property, the title to which he may by deed of trust convey, or may have conveyed or vested in such corporation ; such subscription to be deemed to have been paid in upon the execution and delivery to such corporation of such conveyance or deed of trust : Nev. 825 ; Wash. 2446 ; Uta. 2268.

That this section shall not be so construed as to prohibit the stockholders of any corporation from regulating the mode of making subscriptions to its capital stock, and calling in the same by by-laws or express contract : Uta. 2268.

Where subscriptions to the capital stock of any company are paid in other than money the fact shall be so stated, and the kind of property, with a description thereof, specified in the articles of agreement : Uta. 2268.

It is unlawful to discount or receive any note or other evidence of debt in payment of any instalment actually called in and required to be paid, or with the intent of enabling any stockholder to withdraw any part of the money paid on such stock : N.Y. 1890,564,25.

No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock : N.H. 149,9 ; Pa. Corps. 30.

It may receive subscriptions to its capital stock in lands situate in the state of Michigan, or may receive donations of lands situate in the state of Michigan, to assist or enable such corporation to perform or complete any work of public improvement in which such company may be engaged in pursuance of its charter, and may sell and convey the same : Mich. 4866.

Subscriptions to the capital stock of such of said corporations as have capital stock may be made in land or other property at a valuation agreed upon between the corporation and the subscriber, where the said party so subscribed shall be such as it is proper that the said corporation shall own for the advancement of the purposes for which it was incorporated ; but such subscriptions shall not be otherwise received, nor shall they be so received unless the same shall have been previously authorized by the stockholders assembled in general meeting pursuant to a call to consider the propriety of receiving the said subscription, and of fixing the terms upon which it shall be received : Md. 23,61.

Where property of any kind is received by the authority of the stockholders in general meeting, as aforesaid, in payment for stock, the books of the company shall be so kept as to show at all times fully what property was received for the said stock, at what value, and the number of shares of the capital stock issued for the same; in all other cases money only shall be considered as payment of a subscription to any part of the capital stock: Md. 23,62.

All subscriptions to the capital stock of any company organized, or proposed to be organized, under the provisions of this act, shall be made payable in money or in labor, or property at its money value: S.C. 1886,288,3.

To be named in the list of subscription; and in case of a failure to perform the labor or deliver the property according to the terms of the subscription, the money value thereof, as named in the lists of subscriptions, shall be paid by the subscribers: S.C. 1886,288,3.

But the commissioners may receive subscriptions payable in money, the subscriber having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated necessary labor for the corporation, at the reasonable value of such services or labor, or in property, at the reasonable value thereof, which the corporation has capacity to acquire and hold, the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation: Ala. 1662.

Unless it shall be stated in the articles and notice of incorporation that the capital stock, or some therein designated portion thereof, shall be payable in property, at a valuation to be fixed by the incorporators, which valuation, as well as a general description of said property, shall be contained in said articles and notice: Fla. 1889,3907.

**§ 8115. Security.** A corporation, the stock of which is not fully paid up, may by by-law require each stockholder to give security to the satisfaction of its board of directors for the payment, at such times and in such instalments as the board may direct, of the residue remaining unpaid on his stock. In such case, the security may be given by bond, with one or more sureties, or by pledge of other stocks or securities, or by deed of trust or mortgage on real estate, or in any other manner satisfactory to the board and not prohibited by such by-law: W.Va. 53,31.

So, the certificate may provide for taking security: S.C. 1886,288,5. See § 8025.

When security is taken from stockholders for the unpaid residue of their stock, according to the preceding section, the board of directors shall from time to time examine the said securities, to ascertain the sufficiency thereof. And if, in any case, they deem the security insufficient or doubtful, they shall require other security in lieu thereof; and so from time to time thereafter, whenever they find the security insufficient or doubtful: W.Va. 53,32.

If any stockholder, being thereto required as above, fails to give satisfactory security for the unpaid residue of the stock, the corporation may recover from him by motion on ten days' notice, or by action, the whole unpaid residue of the stock, with interest thereon at ten per cent, or may at their option declare such stock forfeited, having first given two weeks' notice to the stockholder of their intention so to do: W.Va. 53,33.

If any stockholder, having given security as aforesaid, fail to pay the unpaid residue of his stock or any instalment thereof when required, the corporation may recover the amount with ten per cent interest by motion or action as aforesaid; or by the sale or collection of the stocks or securities pledged, or enforcement of the deed of trust or mortgage or other securities given as aforesaid; or by sale of the stock as in § 8112; and if it proceed in any of these modes it shall not be thereby precluded from resorting to the others for the recovery of so much as may remain unpaid: W.Va. 53,34.

**§ 8116. Stock is Personality.** In nearly all states the capital stock of all corporations is declared to be personal property. Vt. 3258; R.I. 152,2; Ct. 1923;

N.Y. 1890,564,40; N.J. Corps. 26; Pa. Corps. 30; O. 3255; Ill. 32,7; Wis. 1751; Minn. 2643; Kan. 23,27; Del. V. 17,147,18; Md. 23,63; Va. 1125,1149; W.Va. 53,20; N.C. 689; Tenn. 1715; Mo. 2502; Tex. 590; Ark. 975; Cal. 5324; Ore. 3229; Nev. 810; Col. 241; Wash. 2429; Dak. Civ. C. 398; Ida. 2611; Mon. G. L. 455; Wy. 510; Uta. 2280; S.C. 1886,288,22 (D.); Ala. 1669; Fla. 34,15; N.M. 200; Oka. 970; D.C. 561.

“When not otherwise provided in the charter:” R.I., Ct.

“When it is divided into shares and certificates issued:” Nev., Dak., Ida.

§ 8117. **Certificate.** Stockholders shall be entitled to receive certificates of their paid up stock in the company; and the officers of the company shall on demand execute and deliver to a stockholder a certificate showing the true amount of the stock held by him in the company: N.J. Corps. 23; Pa. Corps. 25; O. 3254; Va. 1132; W.Va. 53,35; Del. V. 17,147,18.

Such certificate must be (1) signed by the president and treasurer: N.Y. 1890, 564,40.

(2) Signed by the president and countersigned by the secretary, treasurer, or cashier: Pa., Va.

(3) By the president and such other officer, if any, as the board may direct: W.Va.

(4) By the treasurer only: N.J., Del.

Shares shall be numbered in progressive order, beginning at number one; and every stockholder shall have a certificate, under the seal of the corporation, signed by the treasurer, certifying his property in such shares: Ind. 3003; S.C. 1886,288,25.

Each certificate shall set forth the actual capital of the company, the nominal value of each share: Va. 1148; and the amount actually paid on each share by the holder of such certificate: Va., W.Va.

The certificate must be under the corporate seal: N.Y., Va., W.Va., Pa., Del.

All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide: Cal. 5323; Dak. Civ. C. 398; Ida. 2610; Oka. 970.

The “mode of issuing the evidence of stock” is prescribed by the by-laws: S.C. 1886,288,22.

Every stockholder shall have a certificate stating his ownership of the shares named therein, signed by the treasurer and such other officers as the by-laws may prescribe; but no certificate for any share shall be issued until the par value thereof has been fully paid in: N.H. 149,10.

## Art. 812. Increase of Stock.

§ 8120. **Method.** (See also Vol. I. § 453.) Any corporation may, by the law of most states, increase its stock (**A**), (1) by a majority vote of [all] the stockholders: N.H. 149,6; Vt. 3289; Pa. Corps. 35,33,36,55; 1891,191; O. 3262; Minn.\* 2459; Kan. 23,14; 1891,87; W. Va. 54,21; Ark.<sup>d</sup> 961; Mo. 2499; Tex. 576; Ore. 3235; S.C.<sup>b</sup> 1886,288,30; Ala. 1667; Miss. 1882,26,2; Fla.<sup>d</sup> 34,8. In accordance with the by-laws: Kan., Tex.

(2) By vote of two thirds of all the stock: Ct. 1954; N.Y. 1890,564,45; N.J.<sup>a</sup> Corps. 24; Supp. Corps. 33; Ill. 32,52; Md. 23,74-77; Del.<sup>a</sup> V. 17,147,18; Cal. 5359; Nev. 820; Wash. 2439; Mon. G.L. 468; Wy. 522; 1890,7; Uta. 2273; S.C.<sup>b</sup> 1886,288,9; N.M. 208; D.C. 589,592; Oka. 991.

And the same vote is in some states required to authorize an increase of its bonded (or other: Pa.) indebtedness: Pa., Cal., Mo., S.C. ib. 30.



Notwithstanding any restriction in the special or general law creating the company : S. C.

(B) The written assent of the holders (two thirds : N.J., Del. ; three fourths : Dak., Ida., Oka.) of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock as if a meeting were called and held ; and upon such written assent the directors may proceed to make the certificate herein provided for : N.J. 1889,105 ; Dak. Civ. C. 416 ; Ida. 2637 ; Del. ; Oka. 991.

So at any meeting at which all the stockholders are present in person or by proxy, and waive in writing such notice as below prescribed : O. 3262.

Such corporation, by unanimous vote of all the shares represented at any meeting called for that purpose, or by the written consent of all the stockholders in such corporation filed with the clerk, may increase or diminish the number of its shares, and thereby increase or diminish the par value of its shares ; but such capital stock shall not thereby be increased or diminished, and the par value of the shares shall not be fixed below fifty dollars : N.H. 149,7.

Any company organized under the provisions of said act may change the par value of the shares of its capital stock by filing in the office of the secretary of state the assent in writing of stockholders representing two thirds in value of the capital stock for the time being, and also a certificate, under the hands and seals of said stockholders or their legal representatives, stating the par value to which it is proposed to change said shares, which said certificate shall be proved or acknowledged and recorded in the manner provided in said act for the original certificate or organization, and the certificate of the secretary of state that such assent and certificate have been filed in his office shall be taken and accepted as evidence of such change of par value in any court of this state ; provided, however, that such assent and certificate shall be filed as aforesaid within thirty days after the execution of the same by said stockholders : N.J. Supp. Corps. 28.

Any corporation may increase the number of its shares of stock by subdividing the amount of each share, including therein any assessments paid as well as the par value, by filing with the secretary of state the written assent of two thirds of the stock, but not so to increase the amount of its capital beyond that limited in the charter : N.J. Supp. Corps. 30.

For Rhode Island, see § 8025.

When a corporation increases its capital stock, if no other provision is made by law, its directors shall give notice in writing thereof to each stockholder who was such at the date of the vote to increase, stating the amount of the increase, the number of shares or fractions of shares of the new stock which such stockholder is entitled to take, and the time, not less than thirty days from the giving of such notice, within which such new stock shall be taken ; and within said time each stockholder may take at par his proportion of such new shares, according to the number of his shares at the date of such vote to increase ; and if, after the expiration of said time, any shares remain untaken, the directors shall sell the same at public auction for the benefit of the corporation, but shall not sell or issue any shares for less than the par value thereof : Mass. 105,20.

Or such corporation may increase its capital stock to any amount by a vote of the stockholders in conformity with the by-laws thereof, by an actual *bona fide* additional paid up cash subscription thereto, equal to the amount of such increase : Kan. 23,14.

**California Code.** Every corporation may increase or diminish its capital stock (or increase its bonded indebtedness: Cal.) subject to the foregoing provision of this section, at a meeting called by the directors for the purpose, as follows : —

(1) Notice of the time and the place of the meeting, stating its object, and the amount to which it is proposed to increase or diminish the capital stock, must be personally served on (mailed to : Cal.) each stockholder resident in the state, at his place of residence, if known, and, if not known, at the place where the principal office of the

corporation is situated, and (or: Ida.) be published in a newspaper published in the county of such principal place of business once a week for sixty days successively (four weeks: Dak., Ida., Oka.).

(2) The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation (or the estimated cost of the works which it may be the purpose of the corporation to construct: Dak., Ida.).

(3) At least two thirds of the entire capital stock must be represented by the vote in favor of the increase [or] diminution, before it can be effectual.

(4) A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

(5) The certificate must be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the capital stock shall be so increased or diminished (or the bonded indebtedness may be increased accordingly: Cal.): Cal. 5359; Dak. Civ. C. 416; Ida. 2637; Oka. 991.

NOTES. — <sup>a</sup> When beyond the amount named in the articles. <sup>b</sup> These two provisions seem directly contradictory. § 9 seems to take preference as to corporations formed under the act of 1886. <sup>c</sup> See § 8015, note <sup>c</sup>. <sup>d</sup> By a majority voting, i. e. a plurality.

§ 8121. **Restrictions.** But such increase cannot be made (1) to an amount exceeding three times the original capital: Kan. 23,14.

(2) Not to exceed double the original capital: Tex.

(3) Not to exceed the limit prescribed in the articles: Vt.

(4) Not to exceed the limit prescribed in § 8015: N.H. 149,6; Vt.; N.Y.; Pa.

So, ten million dollars: Pa. 1891,191.

(5) It may be made to any extent: N.J. 1889,105; Md. 23,74; Del.; Wash.; Mon.; Wy.; Fla. 34,8; N.M.; D.C. 585. And so, probably, in other states where not limited. But see § 8015.

To twenty millions: Uta.

To not over one million: S.C. 1886,288,9; Ala. 1667.

And the entire bonded indebtedness cannot be increased so as to exceed the amount of authorized capital stock: Pa. Corps. 55; Mo. 2499.

Until such amount is all paid in: Pa.

In case the capital stock of any joint stock corporation shall be increased as provided in the preceding section, at least twenty per cent of the amount added shall be paid to the corporation, either in cash or in actual surplus earnings of the corporation, and the certificate of the increase hereinbefore required shall state the amount so paid, and the manner of payment, and shall not be received or recorded by the secretary of this state or any town clerk unless it contains such statement: Ct. 1955; 1889,64.

And such new stock cannot be issued or disposed of except for property, money, etc. actually received, according to § 8114: N.J.; Pa. Corps. 33; Mo.

All fictitious increase of stock or bonds is void: Pa. Corps. 32; Mo.; Cal. 5359; S.C. ib. 33; Ala. 1891,9. And see § 8114.

No increase is allowed except as herein: S.C. ib. 29.

No increase can be made until after the original capital is fully paid up: O.

In no case shall stock be sold or disposed of at less than par in order to increase the capital of any such corporation beyond the maximum fixed by its charter: W.Va. 53,24.

The stockholders must be given the preference of taking such increase in proportion to their holdings: S.C. ib. 9; Ala. 1667,1675; 1891,91.

And have sixty days in which to subscribe: Ala.

The increase may also be made in the par value of the shares: N.H., W.Va., Ark., Uta.

But a mining company may issue stock or bonds, or sell the same, in payment of real and personal estate for the use of such corporation and for its other corporate purposes and business, at such price and terms as may be agreed on by the directors or stockholders; and any subscriber to the stock of such company may pay for it by the transfer and conveyance of real or personal property necessary for the uses of the corporation, upon such terms as may be mutually agreed upon: W.Va. 53,24. Compare § 8114.

A corporation whose capital is limited by its charter, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed: Dak. Civ. C. 399; Oka. 971.

§ 8122. **A meeting to increase** the stock must be called by a majority of the directors: N.Y. 1890,564,44; Pa. Corps. 34 & 56; O.; Ill.; Md. 23,76; Cal. 5359, amt.; Nev.; Wash.; Mon.; N.M. 208; D.C. 588.

By a majority of the stock: Wy. 520.

Or it may be an annual meeting: Ill. 32,53; W.Va. 54,21.

Or a "special meeting:" W.Va.

It must be "called for that purpose:" Vt.; Ct.; N.Y.; Pa. Corps. 57; Mo.; Cal.; Ore.; Nev.; Wash.; Mon.; Wy.; Uta.; S.C. 1886,288,9; Ala. 1667; N.M.; D.C.

Notice must be given as follows: (1) by publication in the newspapers for thirty days: O., S.C.; for three weeks: N.Y., Ill., Uta., D.C.; for four weeks: Md., W.Va., Wy., Ala., N.M.; for sixty days: Pa., Mo., Cal.; for eight weeks: Nev., Wash.; for six weeks: Mon.; as by the by-laws required: Fla.

The newspaper must be one of general circulation: O., W.Va.

It must be in or nearest the county of location: Pa., Ill., Mo., Nev., Wash., Uta.

(2) By letter or personal notice addressed to each stockholder at his residence: N.Y.; O.; Ill.; Md.; Cal.; Wy.; S.C. ib. 31; D.C.

Thirty days before the meeting: Ill., Ala.

Fifteen days before: Wy.

Sixty days before: Cal.

Three weeks before: N.Y., Md., D.C.

Six weeks before: Mon.

(3) By posting, if no such newspaper: S.C.

A certificate of such action or increase must be filed with the secretary of state: N.H. 147,7; Vt. 3253,3290; Ct.; N.Y. 1890,564,46; Pa. Corps. 37,59; O.; Ill.; Kan.; W.Va. 54,22; Mo. 2501; Ark. 977; Tex.; Cal.; Nev. 821; Wash. 2440; Mon. G. L. 469; Wy. 522; Uta.; S.C. ib. 32; Fla.; N.M. 209.

And filed with the county recorder: N.Y.; Ill.; Ark.; Tex.; Cal.; Wy.; Ala.; D.C. 590.

The town clerk: N.H.

So, a certificate of such increase must be signed and sealed by two thirds of the stock, and recorded like the original articles: N.J., Del.

So, a certificate of the cash payment of such increased stock must be filed, as in § 8111; N.J. Corps. 31.

The effect of such increase or decrease is further, in many states, to bring the company under the general act, if incorporated before or by special act: Del.; Mon. G. L. 463; Wy. 519; D.C. 587. Compare § 8090.

Every company, except railroads, shall pay to the state treasurer, for the use of the commonwealth, a bonus of one quarter of one per centum upon the amount of said increase: Pa. Corps. 61. Compare § 8265.

If the corporation votes for such increase, a certificate of the proceedings showing the amount of increase or diminution shall be made out and signed by the chairman of the

meeting, who must be one of the directors sworn to by the president, and recorded in the office where the articles of the corporation were recorded : Md. 23,77,78.

**§ 8123. Special Cases.** In the case of any company having two or more classes of stock, common and preferred, such increase may be in any one or more classes of stock, whether common or preferred, and such assent shall be by stockholders representing two thirds in value of each class of existing capital stock, whether common or preferred : N.J. Supp. Corps. 33.

In all cases where the bonds of any corporation created by or organized under any act of the legislature of this state have been heretofore issued, and which bonds are due or about to become due, or may be paid by such corporation at its option, it shall be lawful for the board of directors of such corporation to increase its capital stock in order to provide means for the payment of such bonds, and for that purpose to issue and sell the shares of such increase of capital stock for cash only, and in such manner as they deem best, at a price not below the par value of such shares ; but no greater number of shares shall be issued or sold than shall be sufficient to raise an amount sufficient for the payment of the principal sums secured by the said bonds and the interest accrued thereon ; and certificates of stock shall be issued to the purchasers of such additional shares, upon payment in cash of the purchase price thereof ; and the holders of the said shares of the increased capital stock hereby authorized shall possess and exercise the same rights and privileges in all respects as are possessed and exercised by the holders of the other shares of the capital stock of said corporation (other than the preferred stock thereof) ; and the proceeds of the sale of the shares representing such increase of capital stock shall be applied to the payment of such outstanding bonds as aforesaid, and to no other purpose whatever : N.J. Supp. Corps. 35.

If the capital stock of any corporation shall be increased, as is authorized by the preceding section of this act, it shall be the duty of its president and secretary, within thirty days thereafter, to make a certificate under their respective oaths or affirmations (setting forth what bonds of such corporation have been paid by the proceeds of increased capital stock : N.J.), and the number of shares of the increased capital stock thereof that have been issued for that purpose, and to cause such certificate to be filed and recorded in the office of the secretary of state of this state : N.J. Supp. Corps. 36 ; Pa. Corps. 37.

**§ 8124. Reduction of Stock.** The capital stock may be reduced (1) upon vote (or written consent : O., Neb.) of a majority in shares of the stockholders : N.H. 149,6 ; Ct.<sup>a</sup> 1933 ; Pa. Corps. 38 ; O. 3264 ; Neb. 16,56 ; W.Va. 54,21 ; Ore. 3235.

The board of directors must also so vote : O.

Two thirds of the board must approve : Ct.<sup>a</sup>

(2) Of two thirds of the shares : Me. 46,15 ; Vt.<sup>b</sup> 1886,87 ; Ct. 1954 ; N.Y. 1890, 564,44 ; N.J. Corps. 33 ; Supp. Corps.<sup>a</sup> 27,29 ; Ill. 32,52 ; Md. 23,76 ; Wash. 2439 ; Wy. 522 ; Uta. 2273 ; Nev. 820 ; Cal. 5359 ; D.C. 589.

(3) And in all cases, by unanimous consent of the stockholders at any meeting called for the purpose : N.J.

(4) As in the case of amending the charter ; see § 8090 : Ala. 1889,17.

This act also applies to a reduction in the par value of the stock : N.H., N.J. Supp. Corps. 29 ; Neb. ; W.Va. ; Uta.

But only when the assets of the corporation have been so diminished by losses or depreciation of property that its capital is impaired, and to the extent of such impairment : Me. ; Ct.<sup>a</sup> 1933.

And only when the capital stock has been fully paid in : Ct.<sup>a</sup>

And thereupon the par value of all shares issued or to be issued shall be reduced proportionately : Me.

The amount reduced is "returned to the stockholders *pro rata* : N.Y.

The reduction must be made at a meeting legally called therefor : N.H., Me., Vt., Ct., N.Y., Ill.

Notice by mail and publication : N.Y.

As in the case of increase (§ 8122) : N.Y. ; Pa. ; Ill. ; Md. ; W.Va. ; Nev. ; Wash. ; Mon. ; Wy. ; Uta. ; N.M. ; D.C. ; Cal. 5359, amt. ; Ore.

It must be certified under the corporate seal by the secretary, and a copy filed with the secretary of state : Me.<sup>a</sup> 46,17 ; Vt. ; Ct. ; N.Y. ; O. ; Ill. ; Md. ; Ore. ; Wash. ; W.Va. ; Nev. ; Uta. See also § 8122 (3).

And with the county recorder : N.Y., Ill.

A certificate signed and acknowledged like the original certificate must within thirty days thereafter be recorded in the county clerk's office and published for three weeks in a newspaper in such county : N.J. Corps. 33.

In default thereof, the directors are jointly and severally liable for all debts of the company contracted after said thirty days and before such publication and recording ; and the stockholders are also liable for such sums as they may respectively receive of the amount so withdrawn : N.J.

Simultaneously with or after such reduction of its stock, such corporation may from time to time authorize the issue of new shares, of the reduced par value, until the gross capital equals the gross capital authorized by its charter or articles of association before such reduction was made, although the new shares should increase the whole issue beyond the number authorized by such charter or articles : Me. 46,18.

Within thirty days after such reduction a certificate thereof, signed by a majority of the directors, shall be published two weeks successively in a newspaper published in the county where such corporation is located ; and in case of the reduction of the capital stock of any corporation by any mode which shall render such corporation insolvent, the stockholders assenting thereto shall be jointly and severally liable for all debts of the corporation existing at the time of such reduction, after judgment obtained against the latter and a return of execution unsatisfied ; and in order to the validity of any vote reducing the stock, the record shall show the names of the stockholders voting such reduction : Ct. 1954.

So, three weeks' notice must be given in a county newspaper : Ill. 32,54.

The directors, after such reduction of capital, may require each shareholder to return his old certificate, and in lieu thereof may issue a new certificate certifying the number of shares to which he is entitled under the reduction, and such company after such reduction may increase its capital stock to any amount not exceeding the amount authorized in its charter : Ct. 1934.

Where the par value of the stock of any corporation created under the general law is reduced by losses, the stockholders may, in general meeting, establish the true value of the stock, and may also provide for calling in and cancelling the whole or any part of such stock, and issuing other stock instead thereof, at such par value as they may decide so as to represent the true value so established, and may also provide for creating and selling additional stock so as to make up the entire value of the stock designated in the articles, or for a greater or less amount as may be decided by the stockholders : Md. 23,79.

Notice of such meeting must be given in the manner required in § 8122, and the proceedings thereafter shall be similar to those prescribed in §§ 8121-8123 : Md. 23,80.

NOTES. — <sup>a</sup>This act applies only to corporations created by special charter. <sup>b</sup>Only to corporations organized under general law.

§ 8125. **Restrictions upon Reduction.** Before any corporation shall be entitled to diminish the amount of its capital stock, under the provisions of the last preceding section, if the amount of its debts and liabilities shall exceed the amount of the capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced, so as not to exceed such diminished amount of capital: N.Y. 1890,564,44; Md. 23,75; Nev. 819; Wash. 2438; Mon. G. L. 467; Wyo. 519; N.M. 207; D.C. 586.

So the capital cannot be reduced below an amount twenty-five per cent in excess of the indebtedness: Uta. So, fifty per cent: Vt. 1886,87. Not below the indebtedness: Cal. Not below the minimum allowed by law: Ala.

*Provided*, no such reduction of stock shall be construed to effect any reduction of the taxes that may be required to be paid by the special acts respectively incorporating such companies: N.J. Supp. Corps. 27.

No part of the capital stock can be withdrawn from the proper business of the corporation: Vt. 3291.

The directors are forbidden to reduce the stock without the consent of the legislature: Del. V. 17,147,7. See above, and also §§ 8160, 8161.

§ 8126. **Liabilities upon Reduction.** If any part of the stock is withdrawn and refunded to stockholders before payment of all the debts of the company previously contracted, all stockholders are personally liable therefor: R.I.\* 155,5; Ind.<sup>a</sup> 3007; Wis.<sup>a, b</sup> 1755; Minn.\* 2658. See in Title III.

So, "no part of its assets shall be distributed to stockholders before such reduction:" Ct. 1933.

So, in other states, it is provided that the right of creditors is not to be impaired by such reduction: O. 3264; Neb.; Ill. 32,50. For Connecticut, see in § 8124 above.

The owner of stock is not relieved from any liability existing prior to such reduction: N.Y. 1890,564,44.

If the stock of any corporation is withdrawn and refunded to the stockholders before the payment of all debts of the corporation for which such stock would have been liable, the stockholders are liable to any creditor to the amount of the sum so refunded: Vt. 32,93; Ark. 981; Wis. 1755. See also Art. 816.

Within thirty days after such reduction, any stockholder who has not agreed thereto may file a bill in equity in any county in which said corporation has an established place of business, or in which it held its last stockholders' meeting, for a revision of its proceedings in making said reduction, upon which bill such proceedings may be annulled or modified so that such reduction shall not exceed the actual impairment of capital. The action of the court, or, if no bill is filed as aforesaid, the action of the corporation, as provided in the preceding section, shall be conclusive upon all parties, whether stockholders or creditors, and such reduction shall not create any personal liability of any stockholder or officer thereof: Me. 46,16.

But all stockholders shall be liable for contribution to every stockholder compelled to discharge corporate debts under this section proportionably to the amount so refunded or credited to them respectively: Wis. 1755.

NOTES. — <sup>a</sup> "Jointly and severally;" Ind., Wis. <sup>b</sup> Only stockholders voting therefor are liable: Wis.

### **Art. 813. Issue of Preferred Stock.**

§ 8130. Preferred stock may be issued upon the consent in writing of (1) three fourths in number and value of the stockholders: O. 3263.

(2) Two thirds in value, given at a special meeting with thirty days' notice by mail to stockholders and four weeks' publication: Ala. 1889,98.

(3) A majority at such meeting : Pa. Corps. 31.

(4) On the unanimous assent of all the stock : Wy.<sup>a</sup> 1888,24.

Each stockholder must be given the privilege of taking such stock, *pro rata* of his common stock, before it is offered to the public : Wy., Ala.

The company may stipulate (1) that the preferred stock shall be entitled to a dividend not exceeding six per cent per annum in preference to all other stockholders : O. So, seven per cent. : Wy.

After seven per cent is earned on all stock, all must participate in an increase : Wy.

And also that the holders may convert such preferred stock into common stock at their election : O.

(2) "Such dividends as the board prescribe, payable only out of net earnings : " Pa.

A certificate of such issue shall be filed with the secretary of state, etc. : O., Wy., Ala.

A corporation may divide its capital stock into different classes of shares, giving such preferences in relation to dividends to any class as it sees fit ; but the duties and liabilities of its stockholders to creditors of the corporation and to the state shall not be affected thereby : N.H. 149,8.

Every corporation organized under the laws of this state which has heretofore issued, or may hereafter issue, both preferred and common stock, forming part of the capital stock of such corporation, is hereby authorized, whenever the directors of such company shall by vote of two thirds of their number declare it for the interest of the corporation so to do, and the holder of any such preferred stock may request in writing the exchange of the same for the common stock, to exchange the preferred stock of such holder for common stock, and to issue certificates of common stock therefor share for share, or upon such other valuation as may have been agreed upon in the scheme for organization of such company or the issue of such preferred stock ; provided, however, that the total amount of the capital stock of such corporation shall not be increased thereby : N.Y. 1880,225. [Repealed ; see § 8100.]

Any such company shall have power to create and issue certificates for two kinds of stock, namely, general stock and preferred stock ; which preferred stock shall at no time exceed two thirds the actual capital paid in, and may be made subject to redemption, at par, at a fixed time, to be expressed in the certificates therefor ; and the holders of such preferred stock shall be entitled to receive, and the said company shall be bound to pay thereon, a fixed dividend, to be expressed in the said certificate, not exceeding eight per centum, payable quarterly or half yearly or yearly, before any dividend shall be set apart or paid on the said general stock ; and in no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said company ; but in case of insolvency, such debts or other liability shall be paid in preference to such preferred stock ; provided always, that except when otherwise provided in the article, no such company shall create or issue certificates for such preferred stock, except by authority given to the board of directors thereof by a vote of at least two thirds of the stock voted at a meeting of the general stockholders duly called for that purpose : N.J. Corps. 25 ; 1889,265.

Any stock issued for property purchased under [§ 8114] may, by a vote of the board of directors, whenever the certificate of incorporation shall authorize the exercise of such power, contain a provision guaranteeing a minimum yearly dividend payable yearly, half-yearly, or quarterly, but only out of the actual profits of the business of the company ; *provided*, that such provision shall not contain a guaranty of any larger dividend than is authorized to be paid on preferred stock of such company ; such guaranteed dividend to be paid before any dividend is paid on the general stock of said company not containing any such provision ; the holder of such guaranteed stock shall be entitled to participate equally with the other holders of general stock in the profits arising out of the business of the company, and receive full dividends whenever the annual dividend

or the sum of dividends in any year upon the entire capital stock of said company shall exceed the dividend named in such guaranty; the holders of such guaranteed stock shall have all the rights of holders of the general stock of such company, including the right to vote and receive dividends thereon: N.J. Supp. Corps. 15.

And such guaranteed stock may be converted into an equal amount of the preferred stock of the company issuing the same, carrying no larger dividend; and the directors of any company, for the purpose of retiring the guaranteed stock of such company, may issue and exchange therefor an equal amount of its preferred stock, carrying no larger dividend than that guaranteed: provided, that the amount of preferred stock so issued shall at no time exceed two thirds of the entire capital of the company issuing the same; and provided further, that the preferred stock so issued shall be entitled to dividends on a par with preferred stock before issued only with the assent of the holders of preferred stock then outstanding, or in case it shall have been so provided in the original certificate of incorporation, or in the certificates for the preferred stock outstanding: N.J. 1889,266.

Every such corporation may provide for the issue of deferred stock, in payment for such real or personal estate or mineral rights (§ 8114), and if so provided, it shall be expressly stated in the charter filed, or in a certificate to be made and recorded, or in the acceptance of this statute, to be filed by any corporation accepting its provisions with the amount of such deferred stock, and the consideration of the same, and the terms on which the same shall be issued; and the said stock may be made to await payments of dividends thereon until out of the net earnings at least five per centum has been declared and paid upon the other full paid stock of the corporation: Pa. Corps. 32.

Any company authorized by the act to which this is a supplement to issue preferred stock may issue the same in different classes, to be distinguished in such manner as the directors of such company may prescribe; and they may give to the various classes such order of preference in the payment of the dividends, or in the rate of dividends thereon, or in the redemption of the principal thereof as may be approved by the holders of a majority of the stock of the company; and the company shall have the right to redeem its preferred stock upon such terms as may be prescribed in the issue thereof; and it may specifically appropriate for the payment of the dividends upon any class of stock, or for the redemption of the principal thereof, the revenues from any specific department of its business, or the proceeds of any specified portions of its assets or property: provided that no injustice shall thereby be done to the existing rights of other stockholders or creditors of the company: Pa. Corps. 79.

Railroad, and navigation, and manufacturing corporations, and corporations for buying, holding, improving, selling, and dealing in lands, tenements, hereditaments, real, mixed, and personal estate and property, created or organized under this chapter, or under any charter or special act of incorporation heretofore passed, shall have power to create, issue, and dispose of such an amount of special, preferred, or full paid stock of the capital stock of such corporation as may be deemed advisable by the board of directors of such corporation: Minn. 3130.

Any corporation may by its articles of incorporation, or by any amended article of its articles of incorporation, provide, for special, preferred, and common stock, or special or preferred and common stock, of the capital stock of such corporation; and any corporation heretofore or hereafter organized without changing its articles of incorporation may issue its capital stock as a part special and a part preferred and a part common, or a part common and a part either special or preferred, by direction of its board of directors, when so authorized by a majority of its stockholders at its annual meeting or at a meeting called for that purpose; and said board of directors, when so authorized by said meeting of said stockholders, may give such preference as it may deem best to such special or preferred stock, or such special and preferred stock: Minn. 1891,71.



Every corporation incorporated under the laws of this state, which has the power to issue bonds as evidences of indebtedness, and to secure the same by mortgage of the property of such corporation, or which has the power to obtain such money upon mortgage, may, whenever in the judgment of said corporation it is expedient to do so, in place of issuing such bonds, issue a preferred stock for any amount for which the said corporation may be authorized to issue its bonds, or mortgage of its property, and may dispose of the said stock by sale, on such terms as it may prescribe, or by permitting the same to be subscribed for, as in the judgment of said corporation may be deemed expedient; and guaranteeing to the purchasers of, or subscribers to, such preferred stock, a perpetual dividend of six per centum per annum; and the holders thereof shall have all the incidents, rights, privileges and immunities, and liabilities, to which the capital stock of said corporation, or the holders thereof, may be entitled or subject; provided, however, that no corporation shall exercise any power under this section, unless the creation of such preferred stock shall be authorized by a general meeting of the stockholders of such corporation; and the said preferred stock shall be and constitute a lien on the franchises and property of such corporation, and have priority over any subsequently created mortgage, or other encumbrance: Md. 23,294.

The stockholders in general meeting may, by resolution or by-law, provide for or authorize the issuing of preferred stock, on such terms and conditions, and with such regulations respecting the preference to be given to such stock over the other stock in relation to future dividends, or otherwise, as they may deem proper. Provided the maximum capital of the corporation shall not be exceeded, and that notice be first published at least once a week for four weeks successively in some newspaper of general circulation in the county wherein the principal office or place of business of the corporation is situated, of the intention to offer such resolution or by-law: W.Va. 53,16.

It shall be lawful for any railroad company, mining company, manufacturing company, or other incorporated company, to give to its capital stock already issued a preference in the distribution of the profits and assets of such corporation over any other class of the capital stock of such corporation not then issued or sold, but to be thereafter issued: Ky. p. 773, § 1.

Such corporation shall, at a regular meeting of its board of directors and stockholders, adopt a resolution providing for such preference, which resolution shall include in its provisions all of the capital stock of said company then issued, and state the amount thereof, and state the limit of the dividends to be paid on such preferred stock. Such resolution shall also state the amount of the capital stock of such company to be issued as non-preferred stock: Ky.

Such resolution shall be adopted and recorded in the books of said company: Ky. p. 773, § 2.

Such resolution, after [it] is so adopted and recorded and attested, shall not in any manner be so modified or changed as to affect the rights of any holder of the said stock without the written consent of such holder: Ky. p. 774, § 4.

Each share of stock issued at any time in pursuance of such resolution shall have written upon its face, or upon the back thereof, or printed upon its face, or upon the back thereof, a true copy of said resolution and attestation, and shall also show upon its face whether it is preferred or non-preferred stock: Ky. p. 774, § 5.

In case of the liquidation of any corporation organized or existing under the laws of Wyoming which shall have outstanding both common and preferred stock, the net assets of such corporation shall be distributed to all stockholders share and share alike: Wy. 1888,24,3. See Arts. 833-835.

NOTE. — <sup>a</sup> At an annual or special meeting, called as in [§ 8122] provided: Wy.

§ 8131. **Employees' Stock.** Any corporation, by vote of its stockholders at a special meeting, may issue "special stock," to be held only by employees. The par shall

be \$10 payable in monthly instalments of \$1 per share. Such special stock shall not exceed two fifths the actual capital; and is transferable only to other employees or to the corporation. The corporation may provide by its by-laws for the number of such shares to be held by any one employee, and for its redemption by the corporation in case the holder cease to be an employee: Mass. 1886,209.

#### **Art. 814. Of the Stockholders.**

§ 8140. **Liability.** See also §§ 8028, 8112, 8114, 8125, 8161, 8235, 8240. The officers and stockholders of corporations (except banks; whose object is a dividend of profits: N.H.) shall be individually liable for the debts and contracts of the corporation, in the cases and to the extent specified in this chapter (see §§ 8112, 8114, 8125, 8161), and not otherwise: N.H. 150,1; Me. 46,44; Pa. Corps. 47; Kan. 23,46; Mo. 2517; La. D. 690.

So there are special laws as to state banks in most states.

The private property of its members is exempted from liability for corporate debts (except as herein provided): Io. 1063; Fla. 1887,3729.

So, in no other case shall the stockholders be individually and personally liable for the debts of the corporation: Dak. Civ. C. 413; Tex. 610; Ida. 2609; 1891, p. 172; Wy.

Nothing in this title must be construed to render any stockholder individually or personally liable, as such stockholder, for debts or liabilities of the corporation, either at the suit of a creditor or for assessments or calls, to an amount exceeding the balance unpaid upon his stock, or the difference between the amount that has been actually paid upon his stock and the par or face value thereof, except when so liable on the ground of fraud or misrepresentation, or concealment, or for neglect or misconduct as an officer, agent, stockholder, or member of the corporation: Ida. 1891, p. 172.

Members of corporations not organized for profit, and having no capital stock, are not individually or personally liable for its debts or liabilities, unless such liability is imposed by the by-laws of the corporation, and then only to the extent so imposed; any such liability may be enforced, to the extent enforced by the by-laws, by joint or several actions against members, as [below] provided: Ida. 1891, p. 173.

Any person who is the holder of full paid up capital stock shall not be liable for any assessments or for any indebtedness of the corporation otherwise than by sale of his or her stock, as herein [§ 8112] provided, unless distinctly provided for in the articles of incorporation, which articles of incorporation shall not be changed in this respect without the consent of all the stockholders in writing: Uta. 2393.

If the agreement mentioned in § 8022 of this act provide that the individual property of the stockholders shall be liable for the corporate obligations, then such property shall be deemed and taken to be so liable: Uta. 2286.

In "full liability companies" all the stockholders shall be severally individually liable to the creditors of the company for all debts and liabilities of such company. No execution shall issue against any stockholder individually, until execution has been returned unsatisfied against the company; and whenever a judgment is recovered against a stockholder individually, all the stockholders shall contribute; and such stockholder has a right of action therefor: N.Y. 1875,611,34. [Repealed; see § 8100.]

Compare Art. 810.

Each stockholder is, (1) in most states, liable for the debts of the corporation to the amount unpaid of the stock held or subscribed for by him until all the stock is paid in: Me. <sup>a</sup> 46,37,38; Vt. 3292; R.I. §§ 155,1 & 13; N.Y. 1890,564,57; N.J. <sup>b</sup> Corps. 5; Wis. 1758; Ill. 32,8; Io. 1082; Minn. 2455§; Md. 23,64; Del. V. 17,147,4; Ky. 56,14; Tenn. 1708; Mo. 2517; Tex.\* 595 & 610; Col. 247; Wash. 2434; Dak. Civ. C. 413; Ida. 1891, p. 172; Mon. G. L.

457; Wy. 512; Uta. 2286; Ga. 1676; Miss. 1037; Fla. 34,40; 1887,37,29; La. D. 690; Ariz. 245; Oka. 988; D.C. 562,564.

(2) In others he is liable to the amount of stock owned by him, *in addition* to the amount unpaid thereon: O. 3259; Kan. 23,46 & 32††.

(3) "To the amount of the stock of each stockholder:" D.C. 574.

(4) Every stockholder, except stockholders in banks and railroads, shall be liable for all debts and contracts of the corporation until the whole amount of the capital fixed and limited by such corporation shall have been paid in, and a certificate thereof under oath, signed by the treasurer and a majority of the directors, has been filed and recorded by the clerk of the city or town where such corporation has its principal place of business, and not afterward, except in the cases specified in the preceding section. Stockholders in railroads shall be liable only to the amount of the par value of their stock, and not otherwise: N.H. 150,8.

(5) Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation: Cal. 5322; Ariz. 234 (unless exempted: see § 8022).

In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered: Cal. 5322. The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this state: Cal. 5322; Ida. 2609; 1891, p. 173.

See also § 8161.

(6) Each stockholder in any such corporation shall be jointly and severally liable to the creditors thereof in an amount, besides the value of his share or shares therein, not exceeding five per cent of the par value of the share or shares held by such stockholders at the time the demand of the creditor was created; provided, that such demand shall be payable within one year, and that proceedings to hold such stockholders liable therefor shall be commenced within two years after the debt becomes due, and while he, she, or it remains a stockholder therein, or within two years after he, she, or it shall have ceased to be a stockholder: S.C. 1362; 1886,288,22.

In case of the insolvency of a corporation, the stockholders are liable to an amount equal to the amount of their stock at the time the debts were contracted, after the assets of the corporation are exhausted, and no further: provided, that the directors, with the assent of the stockholders, may increase this liability to an amount not exceeding three times the amount of stock held by each stockholder: Ind. 3021g.

NOTES. — <sup>a</sup> After dissolution; see § 8186. <sup>b</sup> He seems to be liable for *his proportion* of such debts only. <sup>c</sup> Unless otherwise specified in their charter, or <sup>d</sup> by general law. <sup>e</sup> "Contracted during their ownership of such stock:" Me. <sup>f</sup> And until the certificate (§ 8111) is made and filed: Md., D.C.

§ 8141. **Termination of Liability.** And such liability shall continue for one year after record of the sale or transfer of the stock: Miss. 1037; Me. 46,37.

Six months: Wis. 1756.

He cannot escape from such liability by assignment, but is liable jointly with the assignee until the stock be fully paid up: Ill. 32,8; Tenn.

A transfer of stock does not, in other states, exempt the person making it from any liability of the corporation created prior thereto: Io. 1078; Minn. 2455§; Tenn. 1715.

No stockholder shall be personally liable for the payment of any debt contracted by

any such company which is not paid within two years (one year : D.C.) from the time the debt becomes due (is contracted : N.Y.), unless a suit for the collection of such debt shall be brought against the company within two years after the debt became due ; and no suit shall be brought against any stockholder who shall cease to be a stockholder in any such company for any debt contracted by the company, unless the same shall be commenced within two (one : D.C.) years from the time he shall have ceased to be a stockholder, nor until an execution against the company shall have been returned unsatisfied in whole or in part : N.Y. 1890,564,58 ; D.C. 575.

And so, a fraudulent transfer to escape the liability is of no avail : Io. 1082 ; Minn. 2455§ ; Ky. : Ariz.

Every assignment or transfer of stocks, on which there remains any portion unpaid, shall be recorded in the office of the recorder of deeds of the county within which the principal office is located. Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time to the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, whether called in or not, as in cases of garnishment. Every assignee or transferee of stock shall be liable to the company for the amount unpaid thereon, to the extent and in the same manner as if he had been the original subscriber : Ill. 32,8.

When such liability does not arise upon contract, it shall be deemed to be incurred when judgment therefor is obtained against the corporation : Ida. 1891, p. 173.

§ 8142. **Other Liabilities.** Stockholders are liable (1) for debts due to the clerks, servants, or laborers of a corporation for their services (not exceeding for six months services : Wis. : so, suit must be brought within six months after the debt was due : Pa. Corps. 46 ; "for all work and labor done to carry on the operations of the company : " Pa.) to an amount equal to the stock owned by them : Pa. Corps. 45 ; Wis.\* 1769.

(2) To any extent, after notice in writing and execution against the corporation returned unsatisfied : N.Y. 1890,564,57.

The term "stockholders," as used in the preceding section, shall apply not only to such persons as appear by the books of the corporation to be such, but to any equitable owner of stock, although the stock appears on the books in the name of another : O. 3259.

And see *California Code*, above, § 8112.

(3) So, stockholders are individually liable for all corporate debts, in case of a failure by the corporation to comply substantially with the provisions aforesaid as to organization and publicity : Minn. 2455 ; Io. 1068 †† ; Neb. 1,16,139. See § 8028.

§ 3143. **Action to Enforce.** [Compare generally Arts. 833-835.] But in no case can the private property of stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same : Me. 46,37 ; Pa. Corps. 46 ; Io. 1083 ; Minn. 2456 ; Kan. 23,32 ; Md. 23,300 ; Mo. 2517 ; Tex. 595 ; Fla. 34,40.

The only remedy to enforce the payment of a debt of a corporation against the individual stockholders thereof shall be a bill in chancery : N.H. 151,1 ; Pa. Corps. 46 ; Md. 23,300.

No stockholder can be imprisoned or his property attached upon an execution, etc. against the corporation : R.I. 155,25\*.

No such bill shall be filed until sixty days after legal demand upon the corporation : N.H. 151,2.

Whenever payment of any debt of a corporation shall be legally demanded, it shall be the duty of the officers and stockholders thereof forthwith to pay and discharge the same with the funds of the corporation, or to expose unencumbered personal property of the

corporation sufficient to satisfy the same, with costs of suit, so that it may be attached in a suit of the creditor against the corporation; and if such property be thus exposed no suit shall be maintained against the stockholders: N.H. 151,3.

The stockholders of all corporations created by the legislature after February sixteen, eighteen hundred and thirty-six, except banking corporations, unless it is otherwise specified in their charter, or by general law, are liable for the debts of the corporation contracted during their ownership of such stock, prior to June one, eighteen hundred and fifty-seven, in case of deficiency of attachable corporate property, to the amount of their stock, and no more; and such liability continues, notwithstanding any subsequent transfer of such stock for one year after such transfer is recorded on the corporation books; but no stockholder whose stock has been fully paid in, and no part of the principal has been withdrawn, is liable for debts contracted after said first day of June; and in the latter case, when an officer certifies, on an execution against a corporation, that he cannot find corporate property to satisfy it, each stockholder's stock and interest in stock may be seized and sold thereon as on execution against him; and he may recover of the corporation the value of the stock or interest so taken as provided in section forty-nine [see below]: Me. 46,37.

At any time within six months after the return of an execution against a corporation, recovered on a debt for which any stockholder is liable under section thirty-seven [above], unsatisfied in whole or in part for want of attachable property of the corporation, the plaintiff in such execution may make demand of any stockholder thereof to disclose and show attachable property thereof sufficient to satisfy the execution: Me. 46,39.

After demand as aforesaid, the execution creditor may have an action on the case against such stockholder, to recover of him individually the amount of his execution and costs, or the deficiency thereof, not exceeding the amount for which said stockholder is liable by section thirty-seven [§ 8140]. Such action must be commenced within six months after the rendition of judgment against the corporation: Me. 46,40.

So, the capital stock of a corporation is liable to attachment and sale on execution against the corporation: Vt. 3263.

But in such case the person whose stock is sold has an action for damages against the corporation: Vt. 3264.

When members of a corporation are liable for its debts, or for any acts of its officers or members, or to contribute for money paid on account of such debts or acts, the amount due may be recovered of such corporation by an action at law, or a bill in equity; and the court may make all necessary orders and decrees: Me. 46,49; Wis. 3223.

Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time: Pa. Corps. 46; Col. 247.

To the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, whether called in or not, as in cases of garnishment: Col.

A stockholder or creditor may enforce such liability by action jointly against all the holders or owners of stock, which action shall be for the benefit of all the creditors of the corporation, and against all persons liable as stockholders; and in such action there shall be found and determined the amount payable by each person liable as stockholder on all the indebtedness of the corporation, in which adjudication no costs shall be taxed to nor collected of any stockholder to an amount which, together with the amount to be paid on said indebtedness, will exceed the amount of the stock on which he is liable: O. 3260.

If any corporation or its authorized agents shall do or refrain from doing any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record, for a payment of money, after demand made by the officer, to be returned "No property found," or to remain unsatisfied for not less than ten days after such demand, or shall dissolve or cease doing business, leaving debts

unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation, by joining the corporation in such suit; and each stockholder may be required to pay his *pro rata* share of such debts or liabilities to the extent of the unpaid portion of his stock, after exhausting the assets of such corporation: Ill. 32,25; Col. 258. If any stockholder shall not have property enough to satisfy his portion of such debts or liabilities, then the amount shall be divided equally among all the remaining solvent stockholders: Ill. And courts of equity may appoint a receiver to close up the corporation, with power to sue in all courts and do all things necessary to closing up its affairs, as commanded by the decree of such courts: Wis. 3224; Ill.; Col. The receiver shall be, in all cases, a resident of the state; shall be required to enter into bonds, payable to the people of the state, for the use of the parties interested, in such penalty and with such securities as the court may in the decree or order appointing the same require: Ill. In all cases of suits for or against such receiver, or the corporation of which he may be receiver, writs may issue in favor of such receiver or corporation, or against him or it, from the county where the cause of action accrued to the sheriff of any county in this state for service: Ill. 32,25. For other states, see Arts. 834, 835.

When, under the laws of this state, the stockholders of any corporation are individually liable for any of its debts, except in cases where the suit is for labor brought by the person who performed it, the remedy is by petition of the plaintiff to the court showing that a judgment has been recovered against the corporation for an indebtedness for which its stockholders are by law liable, and an execution issued upon such judgment to the court in which the principal office of the corporation is situated or its business carried on has been returned unsatisfied, in whole or in part. The court thereupon enters an order requiring the secretary of the corporation to file in said cause a statement of the names and residence of the persons who are stockholders of record, or whom such officer has reason to believe were stockholders at the time the debt accrued, and the amount of stock held by each of said persons. Whereupon the plaintiff files a petition setting forth the foregoing facts, and that the several persons named in such statement of the officer were stockholders at the time the debt accrued, with the amount of stock held by each, and also setting forth the consideration received by the corporation for such debt. Whereupon a citation issues to such stockholders, who may appear and answer in writing, which issue is thereupon tried and judgment rendered accordingly against each person for the full amount of the debt; after which the court makes order of apportionment *pro rata* according to the stock held by each, and if any part of such judgment is unpaid the court may reapportion it among the remainder of the defendants: Mich. 4886-4898.

In all cases in which the directors or other officers of a corporation, or the stockholders thereof, shall have been made parties to an action in which judgment shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the corporation; if any part thereof shall still remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and adjudge the amount payable by each, and enforce the judgment as in other cases: Wis. 3226.

Such stockholder, as well as the corporation, is duly served with process in the action, and the issue involving his individual liability as aforesaid raised and determined: Minn. 2456.

The officer holding an execution must make demand of some officer of the corporation; and if he does not satisfy it or point out corporate property that may be levied on, the officer may make levy upon the private property of the stockholders: Minn. 2457.

And an execution against the company may, to that extent, be levied upon the private property of such individual : Io. 1082 (see §§ 8140-1); Ky. 56,14; Ariz. 245.

It is sufficient proof that no property can be found if an execution against the corporation has been returned unsatisfied, and an ineffectual demand made on some of the officers for property on which to levy : Io. 1083.

Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action must be brought against him, in any stage of which he may relieve himself by pointing out corporate property subject to levy ; but he is not permitted to controvert the validity of the judgment unless it was rendered through fraud and collusion : Io. 1084.

In any proceedings against a corporation or a stockholder, as above provided, the court has power to compel the production of the books of the corporation : Io. 1087. Compare § 8305.

So, upon an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged ; and, upon such motion, such court may order execution to issue accordingly (or the plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment : Kan., Tex.) : Kan. 23,32 ; Mo. 2517 ; Tex. 595 ; Fla. 34,40.

Any creditor of the corporation may institute joint or several actions against any stockholders that have not wholly paid the capital stock held by them (Dak., Oka.) for the proportion of his claim payable by each (Cal.), and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable (Cal.), the amount that is unpaid upon the stock held by each stockholder and for which he is liable (Dak., Ida., Oka.), and a several judgment must be rendered against each, in conformity therewith. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred ; and such liability is not released by any subsequent transfer of stock. The term "stockholder," as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another, and also to every person who has advanced the instalments or purchase money of stock in the name of a minor, so long as the latter remains a minor ; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same ; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation ; but the pledgor, or person or estate represented, is to be deemed the stockholder as respects such liability : Cal. 5322 ; Dak. Civ. C. 413 ; Ida. 2609 ; 1891, p. 172 ; Oka. 988. See also § 8146.

In all suits against the members of a private association, joint stock company, or the members of existing or dissolved corporations, to recover a debt due by the association, company, or corporation, of which they are or have been members, or for the appropriation of money or funds in their hands to the payment of such debt, the plaintiff or complainant in such suit may institute the same, and proceed to judgment therein against all or any one or more of the members of such association, company, or corporation, or any other person liable, and recover of the member or members sued the amount of unpaid stock in his hands, or other indebtedness of each member or members : provided, the same does not exceed the amount of the plaintiff's debt against

such association, company, or corporation ; and if it exceed such debt, then so much only as will be sufficient to satisfy such debt : Ga. 3367.

Plaintiffs or complainants, within one month after the institution of any suit or suits, at law or equity, against any corporation, joint stock or manufacturing company, may publish once a week, for four successive weeks, in some public gazette of this state, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stockholder in said corporation, joint stock or manufacturing company, for the purpose hereinafter mentioned : Ga. 3371.

When notice has been given as provided in the preceding sections, and a judgment or decree has been obtained against any corporation, joint stock or manufacturing company, where the individual or private property of the stockholders is bound for the whole or any part of the debts of said corporation, joint stock or manufacturing company, execution shall first be issued against the goods and chattels, lands and tenements of said corporation, joint stock or manufacturing company ; and upon the return thereof by the proper officer, with the entry thereon of "No property to be found," then, and in that case, the clerk or other officer, upon an application of the plaintiff, his agent or attorney, accompanied with a certificate as hereinafter directed to be obtained, forthwith shall issue an execution against each of the stockholders (if required) for their ratable part of said debt and costs of suit, in proportion to their respective shares or other liabilities under their charter of incorporation : Ga. 3372.

After judgment against a corporation is returned unsatisfied, the plaintiff may file a bill against all or any persons who may be in any manner indebted to said corporation, either for the stock thereof or on any other account ; and if the court shall find such person or persons to be indebted to said corporation, a decree shall pass directing such persons so found to be indebted to bring the money into court, to be distributed ratably among the creditors of such corporation, in the same manner that distribution is made on a creditors' bill : Md. 23,300.

**§ 8144. Defences and Contribution.** In such action said stockholder may prove, in reduction of his liability, the amount of corporate debt which he has previously paid, and which has not been repaid to him by the corporation ; also any debt due him from the corporation, for which he at the time might maintain an action at law against it ; and may show any other legal cause why judgment should not be rendered against him : Me. 46,41.

If any stockholder pays his proportion of any debt due from the corporation incurred while he was such stockholder, he is relieved from any further personal liability for such debt (but not from liability for fraud, etc. : *Ida.*) : Cal. 5322 ; *Ida.* 2609 ; 1891, p. 273 ; and if an action has been brought against him upon such debt, it shall be dismissed as to him upon his paying the costs, or such proportion thereof as may be properly chargeable against him : Cal.

In actions by or for the benefit of any such creditor against stockholders to recover what may be due and unpaid on any stock, such stockholders shall only be credited with such sums as have been actually paid in, in money or its equivalent in value, on account of such stock, and not with any dividend which may have been declared and applied on such stock : Wis. 1758.

When the private property of a stockholder is taken for a corporate debt, or he is compelled to pay it, in any case he may maintain an action against the corporation for indemnity : Vt. 3264 ; R.I. 155,23 ; Pa. Corps. 46 ; Io. 1085 ; and also against any of the other stockholders for contribution : Pa. ; Io. 2658.

So, if any stockholder pay more than his due share of a corporate debt, he may compel contribution from the other stockholders : Vt. 3293 ; R.I. 155,23 ; Mich. 4898 ; Kan. 23,15.

Any stockholder who has voluntarily paid any debt or liability of a corporation,



after demand for payment thereof, which he was legally holden to pay, may have contribution by a bill in equity against the other stockholders for such sum as he ought equitably to recover; but no director, officer, or stockholder who advised or consented to any act in violation of the provisions of this [Title] shall recover against any stockholder who did not advise or consent thereto: N.H. 150,21.

If any stockholder shall be compelled to pay the debts of any creditor as above (§ 8126), he may have a bill in equity against the other stockholders to contribute their proportional part: Ark. 981.

§ 8145. **Execution on Stock, etc.** (See § 8153; and generally in Part. IV.) Stock is in nearly all states subject to levy and sale under execution against the owner: N.H. 237,15; Mass. 171,45; Me. 84,12; Vt. 3262; R.I. 223,20; Ct. 919; Pa. Executions, 15,46; O. 3255,5464; Ind. 723; Ill.<sup>c</sup> 77,52; Mich. 7697; Io. 3050; Kan.<sup>e</sup> 80,481; Md. 23,277; W.Va. 53,20; N.C. 362; Mo. 4925; Ark. 3003; Tex. 2294; Cal. Civ. P. 688; Ore. 3229; Nev. 3241; Col. 1877; Wash. 178; Dak. Civ. P. 314; Ida. 4477; Mon. Civ. P. 319; Wy. 2772; Uta. 3426; S.C. Civ. P. 258; Ga. 3291; Ala. 1673; Fla. 1889,3917; N.M. 227; Ariz. 1911; Oka. Civ. P. 49.

As personalty: Pa.; Mich. 7702; W.Va.; Tenn. 1715; Ore.; Ala.

So, fully paid up stock only: O.

The same is probably the case in states where no statute is found: Neb., Del., Va., Ky.

It is sold under *fi. fa.*, like real estate: Md. 23,281; Pa. *ib.* 40.

And in case of sale, the corporation is bound to make the necessary transfer: N.H.; Mass.; Me. 84,15; R.I.; Ind.; Ill. 77,56; Mich. 7700; Tenn.; Ore.; N.M.

So, it is liable to attachment: N.H.; Mass. 161,71; Me. 81,27; Vt.; R.I. 208,9; Ct.; N.Y. C. C. P. 647; Mich. 7701; Io. 2967; Md.; N.C.; Mo. 540; Ark. 320; Cal. Civ. P. 542; Nev. 31,49; Col. 1881; Wash.; Dak. Civ. P. 207; Ida. 4306; Mon. Civ. P. 185; Wy.; Uta. 33,13; S.C. Civ. P. 256; Ga. 3289; Ala.; Miss. 24,23; Fla.; N.M.

To garnishment for debts of the owner: Ark. 320; Tex. 208; Wy.

When stock is attached, a certified copy of the process must be left with the president or treasurer, who shall<sup>a</sup> give the officer a certificate of the number of shares owned by the debtor: N.H. 237,18-19; Mass. 171,46 & 48; 161,71 & 73; Me.; Vt. 3262; R.I.<sup>b</sup>; Ct. 919; N. Y. Civ. P. 650; Io.<sup>a</sup> 2967; Md. 23,278-9; Del. 70,14; Ark. 321; Cal.<sup>a</sup>; Col. 1878; Ida.<sup>a</sup>; Mon.<sup>a</sup>; Wy. 2773; Uta.<sup>a</sup>; S.C.; Fla.

So, upon execution: N.H.; Mass.; Me. 84,13-14; Vt.; Ill. 77,55; Mich. 7998-9; Mo. 49,24; Ark. 3003; Tex.<sup>a</sup> 2294; Cal.<sup>a</sup>; Col.; Ida.<sup>a</sup>; Mon.<sup>a</sup>; Wy.; Uta.<sup>a</sup>; S.C.; Fla.; Ariz. 1909; Oka.

The attaching officer merely makes a declaration to the officers of the corporation: Miss. 2424.

When a share of such capital stock is attached, a copy of the attachment shall be left with the clerk of the corporation, and such stock may be taken and sold on execution, like other personal property, and the purchaser shall cause an attested copy of the execution and officer's return thereon to be left with the clerk of the corporation within twelve days after such sale, and the title of the stock so sold shall vest in the purchaser: Vt. 3262.

So in effect in: Ala., Ga.

The shares of any person may be attached, and so many sold at auction as shall be sufficient to satisfy the debt, interest, and costs upon order and notice as in ordinary executions. If the debtor lives out of the county a copy of the advertisement must be also mailed him ten days before the sale, and published in a newspaper in the county of his residence: Del. 70,13.

The money arising from the sale is applied by the officer as in the case of attachment sales of ordinary personal property : Del. 70,16.

Stock is subject to levy and sale as such, the company in such case being required to make the proper entries in its stock or transfer book ; but such sale will not relieve a stockholder from liabilities which had attached to him as such previous to the sale, neither will a voluntary sale : Tenn. 1715. See § 8151.

Any creditor of a corporation may fill out a garnishment to reach and subject the unpaid subscription of any stockholder in the corporation : Ala. 1889,111.

**Duties of Officers as to Creditors.** The clerk of every such corporation, on demand of an officer holding an execution against it, shall furnish him with the names, and so far as known to him the residences, of every person liable thereon under this chapter, and the amount (1) of his liability : Me. 46,43 ; Mo. 2518 ; Fla. 34,41 ; (2) of his stock : Kan. 23,33 ; Tex. 596.

The treasurer of every such corporation shall keep a full record of all claims in favor of its stockholders against the corporation, and exhibit the same, with a particular statement of its financial condition, to any creditor thereof when requested by him, and on failure to exhibit such statement the stockholders shall not be entitled, in actions against them, to show previous payments on account of the corporation in reduction of their liability ; but if they suffer damages by reason of being thus deprived of their defence, they have a remedy upon the bond of the treasurer : Me. 46,42.

It shall be the duty of the president or presiding officer of such incorporation, joint stock or manufacturing company, by whatever name he may be designated, upon application of the plaintiff, his agent or attorney, forthwith to give a certificate under oath of the stockholders in said company, and the number of shares owned by each at the time of the rendition of judgment against said company : Ga. 3373.

**Effect of Attachment.** No assignment or transfer by the debtor under attachment is valid ; and the sale under attachment process fully transfers title : Del. 70,15 ; Ga. 3290 ; Fla. ib. 6 ; N.M. 227,228.

Provided, that all executions or attachments levied or laid upon the shares or interest of any defendant in the capital, joint stock, or debts of a corporation standing on its books in his name shall only affect the interest which such defendant had in such capital, joint stock, or debts at the time of levying such execution or attachment, and shall not in any way affect the right, title, or interest acquired by any *bona fide* purchaser or pledgee for value to or in the capital, joint stock, or debts of such corporation standing on its books in the name of such defendant, by a sale or pledge thereof by such defendant by a delivery of the certificate representing such capital, joint stock, or debts, with a power of attorney to transfer the same made prior to the levying of such execution or attachment, and that nothing contained in the succeeding sections of this article shall be construed to apply to any such capital, joint stock, or debts so sold or pledged, or to prohibit or prevent any such corporation or purchaser or pledgee from transferring the said capital, joint stock, or debts represented by such certificate upon the books of the corporation in the same manner and to the same effect as if no such execution or attachment had been levied : Md. 23,277.

Rights and shares of stock in an incorporated company, levied upon under the provisions of this subdivision, shall be held and bound from the time of the levy made in the manner hereinbefore provided : Wyo. 2778 ; Oka. Civ. P. 49.

In all cases where the share or shares of the capital stock of any corporation shall have been pledged in good faith, or hypothecated as collateral security, for any loan or debt, and the certificate thereof shall have been delivered upon such pledge or debt, such share or shares shall not be liable to be taken on execution against the pledgor, except for the excess of value thereof over and above the sum for which the same may have been pledged, and the certificate thereof delivered : Wyo. 2779 ; Ill. 77,52.

All transfers of the stock, made in good faith and for a valuable consideration before notice of the levy is given, are valid and operative, and must prevail over the levy : Miss. 1673.

Transfers of stock after the levy of an attachment or after judgment, and with notice to the corporation of the levy or judgment, are absolutely void : N.M. 228.

NOTES. — <sup>a</sup> This last provision does not appear. <sup>b</sup> Such statement is filed with the court : R.I. <sup>c</sup> But only if he has not personal and real property sufficient to satisfy the judgment.

§ 8146. **Guardians, Trustees, Executors, and Administrators** holding stock are not personally liable for corporate debts, or as stockholders; but the beneficiary's estate is so liable : N.H. 150,20 ; Me. 46,38 ; R.I.\* 155,26 ; N.Y. 1890,564,57 ; Ind. 3008 ; Ill. 32,23 ; Minn. 3133 ; Md. 23,66 ; Col. 256 ; Wash. 2435 ; Mon. G. L. 464 ; Wy. 516 ; S.C. 1886,288,22 ; Fla. 34,20 ; N.M. 206 ; D.C. 576,578.

Unless "he shall have voluntarily invested the trust funds in such stock : " N.Y.

So in many states of pledgees of stock, or persons holding it as collateral security : N.H., R.I.,\* N.Y., Ind., Ill., Md., Col., Wash., Mon., Wy., S.C., N.M., D.C.

But such guardians, pledgees, etc. may vote on stock so held by them ; see § 8055 : N.Y.

But the person pledging such stock is considered as holding the same, and is liable as a stockholder accordingly ; and so the estate or funds, etc. in the hands of such executor, etc. are liable in the same way : N.H., R.I.,\* N.Y., Ind., Ill., Md., Col., Wash., Mon., Wy., S.C., N.M., D.C.

Unless (as above) : N.Y.

§ 8147. **Loans to Stockholders** of money of a corporation are prohibited : N.H. 150,2 ; R.I. ; N.Y. ; N.J. Corps. 54 ; Del. ; Mon. G.L. 462 ; D.C. 570 ; and the officers assenting to it are personally liable<sup>a</sup> (1) to the amount of such loan (with interest : N.Y., D.C.) for all debts of the corporation contracted before it is repaid : N.J., Mon., D.C. Compare § 8209.

So also of loans to officers of the corporation : N.J., Ga.

Except in the case of banks : N.H.

Any stockholder who shall unlawfully receive any loan from the corporation, or any sum unlawfully withdrawn or refunded from the capital stock thereof, or who shall knowingly accept or receive any such dividend unlawfully made, shall, to the amount by him received, be individually liable for all the debts of the corporation then existing or afterward contracted, until the same is repaid, or paid to the creditors of the corporation : N.H. 150,7. See § 8140.

No loan of money shall be made by any such corporation to any stockholder therein ; and if any such loan shall be made to any stockholder, the officer or officers who shall make it, or who shall assent thereto, shall be jointly and severally liable for all the debts of the corporation contracted before the making of the said loan (1) to the extent of double the amount of said loan ; this section shall not, however, apply to any building or homestead association, or any association for the loan of money on real or personal property, or to any savings institution : Md. 23,69.

(2) To the extent of the loan and interest : R.I. 155,7\* ; N.Y. 1890,564,25 ; N.J. Corp. 54 ; Del. V. 17,147,29.

NOTE. — <sup>a</sup> "Jointly and severally : " N.Y., N.J.

§ 8148. **A Lien on Stock** exists, in many states, in favor of a corporation for all debts due to the corporation from the owner of such stock : Vt. 3296 ; Ct. 1923,1960 ; Minn. 2657 ; Ark. 975 ; Uta. 2276 ; S.C. 1886,288,14 ; Ala. 1674. "Before notice of a transfer or levy of such shares : " Ala.

So, if the by-laws so declare : Ga. 1999 ; S.C. 1886,288,26.

The corporation shall have a lien upon all the stock owned by any person or estate therein for all individual, joint, and partnership debts due it from him or such estate, and for any contingent liability to it as indorser, acceptor, guarantor, or surety upon any negotiable or commercial paper; and any corporation desiring to enforce such lien may give notice to such stockholder, his executor or administrator, and if there be none, his heir at law, that unless he shall pay his indebtedness to said corporation within three months it will sell said stock; and such corporation may prescribe by its by-laws the manner of giving notice required by this section, but the notice of sale shall in no case be given until the liability has become fixed : Ct. 1960.

Such corporation may, at any time within three months after the time limited in such notice shall have expired, advertise, in a newspaper published in the county where such corporation is located, its intention to sell such stock, giving at least three weeks' notice of the time and place of such sale; and at such time and place may sell at public auction so much of said stock as shall pay such indebtedness together with the necessary costs of sale : Ct. 1961.

When the purchasers of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to them; and it shall be the duty of such delinquent stockholder to surrender so much of his stock as corresponds with such new issue, or it may be cancelled : Ct. 1962 ; Ark. 987.

Any corporation having a lien upon the stock of any stockholder may give notice to him that, unless such debt be paid within three months, the corporation will sell the stock, and upon default of payment may sell such stock, or the equity of redemption if pledged. The notice required is given in any manner to be prescribed by the by-laws : Ark. 985,988. See § 8153.

So, it may sell after thirty days' notice, as in § 8112 ; Ala.

Such corporation may, at any time within six months after such notice and the three months' notice shall have expired, advertise by three weeks' notice of the time and place of sale; and at such sale shall state the amount due from the stockholder, and then sell for cash at public auction to the highest bidder so much of his stock as shall pay in full his indebtedness with costs of sale, and sue for the balance if insufficient : Ark. 986.

Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation : Ark. 989.

Such lien is binding upon the incorporators themselves, and their creditors or purchasers with notice : Ga. 1999.

§ 8149. **Suits.** (Compare Arts. 830, 825.) A corporation may sue its members or stockholders for any cause relating to the business of the corporation the same as other persons (and so, *vice versa*, the stockholders may sue the corporation : Wis.): Wis. 1770 ; Mo. 2516 ; Tex. 593 ; S.C. 1577 ; Fla. 34,16. Compare § 8113.

## **Art. 815. Method of Transfer.**

§ 8150. Stock may be transferred (A) by the owner's or his agent's indorsement (or a written power of attorney : R.I., Mass., Oka.) accompanied with the delivery of the certificates : Mass. 1884,229 ; Me. 46,12 ; R.I. 1888,690,1 ; Mich. 4866 ; Wis. 1751 ; Cal. 5324 ; Nev. 810 ; Dak. Civ. C. 398 ; Ida. 2611 ; Miss. 1037 ; Oka. 970.

But no transfer is valid (1) except as between the parties, until entered on the books of the corporation : Me. ; Ct. 1923,1960 ; Mich. ; Io. 1078 ; Minn. 2454 ; Kan.

23.27; Tex. 590; Ky. 56,11; Cal.; Nev.; Wash.; Dak.; Ida.; Mon.; S.C. 1886,288,14; Miss.; N.M. 200; Ariz. 242; Oka.

(2) So, it is not valid as to *bona fide* creditors or subsequent purchasers without notice, unless entered: Ala. 1670-1.

(3) Nor as against the company, for dividends or other purposes: Mass.; R.I.; N.Y. 1890,564,29.

(B) Stock is transferable in the manner provided (1) by the by-laws: Vt. 3258; R.I. 152,2; Ct. 1960; N.J. Corps. 26; Pa. Corps. 25 & 29; N.Y., 1890,564,40; Ill. 32,7; Kan.; Tex. 590; Del. V. 17,147,18; Md. 23,63; Va. 1149; W.Va. 53,21; Mo. 2502; Col. 241; Wash. 2429; Mon. G. L. 455; Wy. 510; Uta. 2280; S.C. 1886,288,22; Ala. 1669; Fla. 34,15; N.M. 200; D.C. 591.

(2) By the directors: Ct. 1923; Minn. 2657§§; Ark. 975.

But only "on the books of the company:" N.J., Pa., Ark., Minn., Tex., Ct., Del., W.Va.

"Such by-laws must be reasonable and not in conflict with law:" Wy.

If the treasurer or officer refuse to make transfer on the books, any person aggrieved has a summary process in court to compel such transfer: Wis. 1752.

It must be so entered on the books of the corporation as to exhibit the names and residences (except in Ky.) of the parties, the number of the shares, and the date of their transfer: Me. 46,12; Mich.; Io.; Minn.; Ky.; Cal.; Nev.; Wash.; Dak.; Ida.; Mon.; S.C.; N.M.; Ariz.; Oka.; D.C.

Certificates of shares shall be issued to those entitled to them by transfer or otherwise, signed by the president and attested by the cashier, clerk, or treasurer. Neither shall sign blanks and leave them for use by the other, nor sign them without knowledge of the apparent title of the person to whom they are issued. In case of the absence or disability of either of said officers, the signature of a majority of the directors in his stead is sufficient: Me.

No transfer of stock shall be valid for any purpose whatever (as against the company, its stockholders, or creditors: N.Y.), except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this act, unless it shall have been entered therein as required by this section (within sixty days from the date of such transfer: Col., N.M.), by an entry showing to and from whom transferred: N.Y. 1890,564,29; Col. 269; Mon. G. L. 471; N.M. 224; D.C. 581. Compare § 8152.

Shares may be transferred by the proprietor, by writing by him signed on the back of the certificate, or by a deed under seal; and the purchaser, on producing and delivering the former certificate and the transfer thereon or deed thereof, shall be entitled to a new certificate, if no liens upon the stock against the former proprietor have attached: N.H. 149,13; O. 3254.

The free sale of shares in the stock of any corporation, by the owner thereof, shall not be restrained by the by-laws of any corporation; and all such by-laws heretofore or hereafter made shall be void: N.H. 149,15.

The person to whom any such certificate is issued may return the same to the office of the company, and, in person, or by an attorney acting under a power from him, assign on the books of the company either the whole number of shares mentioned in such certificate, or a less number. The certificate so returned shall be cancelled and filed in the company's office. And thereupon so many new certificates shall be issued, and to such person or persons as may be proper in the case: Va. 1134.

A stockholder to whom a certificate has been issued shall not be allowed to transfer the shares therein mentioned, or any part thereof, without delivering up the said certificate to the corporation to be cancelled, unless the same be lost or destroyed, or sufficient cause can be shown to the satisfaction of the board of directors why it cannot be produced: W.Va. 53,36.

Whenever any stockholder shall transfer his stock, a certificate of such transfer shall forthwith be deposited with the county clerk, who shall note the time and record it in a book to be kept by him for that purpose; and no transfer of stock shall be valid as against any creditor of such stockholder until such certificate shall have been so deposited: Ark. 971.

When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary, or directors, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, or a bond of indemnity: Cal. 5326; Dak. Civ. C. 415; Okla. 990.

Whenever any person permanently residing without the state shall die, being the owner of any bank stock, railroad stock, insurance, or other stock in any bank or incorporated company in this state, or in any national banking association located in this state, it shall be lawful for his heirs, executors, administrators, or representatives to sell and transfer any and all stock so held: La. 1888,109.

**§ 8151. Prerequisites.** No stock can, in several states, be transferred until all previous assessments thereon are fully paid (or while the holder is indebted to the company: Pa.; N.Y.): N.Y. 1890,564,26 & 40; Kan.; Pa. Corps. 25 & 30; Md. 23,63; Mo.; Va. 1130; W.Va. 53,22; Fla. 34,15; D.C. 561. And compare §§ 8150, 8152.

*Provided* this section is printed *on the certificate*: N.Y.

Unless such stock is declared forfeited for non-payment: Pa., Md., D.C.

Or unless with the consent of the company: Va.; or board of directors: Pa., N.Y.

Or unless security is given, to the satisfaction of the board, for the residue remaining unpaid: W.Va.

And the validity of such security is not affected by a transfer: W.Va.

If any stock shall be transferred which is not fully paid, the corporation may, by agreement, to be noted on its stock-book, discharge the stockholder making such transfer from liability to it for the unpaid part of his stock subscription, and accept that of the person to whom the stock is transferred in his place; but the person transferring such stock shall be liable for the amount unpaid thereon to the then creditors of such corporation, and those who may become such within six months after such transfer, or to any lawfully appointed receiver or assignee of the corporation for its use: Wis. 1756.

A corporation shall issue no certificate of stock to a shareholder or purchaser until he informs it of his actual place of residence: Mass. 105,22.

Corporations may, by by-laws, provide that no transfer of its stock shall be made upon its books until all indebtedness to the corporation of the person in whose name the stock stands, whether for assessments, calls, or otherwise, is paid: Ida. 2611.

**§ 8152. Effect.** (See §§ 8140, 8150.) No sale, assignment, or transfer of stock in a corporation shall affect the right of the corporation to pay any dividend due upon the same, or to treat the holder of record as the holder in fact, until it is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been transferred: Mass. 105,24; 1884,229; R.I. 1888,690; Wis. 1891,414. See § 8153.

Every person transferring stock remains liable for unpaid assessments thereon to the creditors of the corporation, as in § 8140: Wis. 1751; Ore. 3230.

So, on any assignment, the assignee and assignor remain severally liable: Va. 1130.

Stock is transferred "subject to all payments due or to become due thereon:" Pa. Corps. 25.

The assignee or party to whom the same shall have been so transferred shall be a member of said corporation, and have and enjoy all the immunities, privileges, and

franchises, and be subject to all the liabilities, conditions, and penalties, incident thereto, in the same manner as the original subscriber or holder would have been : Pa. Corps. 25.

Such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer : Minn. 2454.

A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof, as it regards the company : Va. 1131 ; W.Va. 53,19.

If any person shall, for valuable consideration, sell, pledge, or otherwise dispose of any of his shares of stock to another, and deliver to him the certificate for such shares, with a power of attorney authorizing the transfer of the same on the books, the title of the former (both at law and in equity) shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of any subsequent purchaser from the former, subject to the provision of [§ 8151] : Va. 1133 ; W.Va. 53,37.

All sales of stock, whether voluntary or otherwise, transfer to the purchaser all rights of the original holder, or person for whom the same is purchased, and subject such purchaser to the payment of any unpaid balance due, or to become due, on such stock ; but if the sale be voluntary, the seller is still liable to existing creditors for the amount of such balance, unless the same be duly paid by such purchaser : Ore. 3230.

**§ 8153. Pledges of Stock.** (Compare §§ 8145, 8152.) In transfers of stock as collateral security, the debt or duty which such transfer is intended to secure shall be substantially described in the deed or instrument of transfer : Mass. 105,25 ; N.J. Corps. 26 ; Del. V. 17,147,18.

A certificate of stock issued to a pledgee or holder of such collateral security shall express on the face of it that the same is so holden ; and the name of the pledger shall be stated therein, who alone shall be responsible as a stockholder : Mass.

The delivery of a stock certificate to a *bona fide* purchaser or pledgee for value, together with a written transfer or a deed of the same, or a power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against all parties (except the corporation : N.H.) : N.H. 149,14 ; Mass. 1884,229 ; R.I. 1888,690 ; Wis. 1891,414. But no such transfer shall affect the right of the corporation to treat the stockholder of record as the stockholder in fact, until the old certificate is surrendered and a new certificate is issued to the person entitled thereto : N.H. See also § 8152.

The treasurer, cashier, or other officer who has the lawful custody of the records of transfers of shares, upon the written request of a creditor of the general owner of stock pledged or transferred, shall exhibit to him the record of such transfer : and in case of refusal, and of loss to the creditor by reason thereof, the corporation shall be liable for the amount of the loss : Mass. 105,26.

Shares of stock in any corporation organized in this state under the laws of this state, or of the United States, may be pledged by executing and delivering a power of attorney for its transfer, with the certificate of stock therein mentioned, to the party to whom the pledge is made ; but no such pledge, unless consummated by an actual transfer of the stock to the name of such party, shall be effectual to hold such stock against any person but the pledger, and his executors and administrators, until a copy of said power of attorney shall be filed with the cashier, treasurer, or secretary of said corporation : Ct. 1924.

When any such stockholder shall have made a transfer of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, it may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and may require the party holding

a transfer or assignment of such stock to give a sworn statement to its treasurer of the amount for which such stock was pledged ; and if he shall not give such a statement at or before the time such sale is to take place, he shall forfeit his lien : Ct. 1963 ; Ark. 988. See §§ 8147, 8148.

Any stockholder may pledge his stock, by a delivery of the certificates, or other evidence of his interest : Nev. 813 ; Wash. 2432 ; N.M. 203 ; Vt. 1884, 103. Compare § 8055.

But such pledge is only valid against attaching creditors, or others than the party, his administrators and assigns, when recorded or noted in the stock-book : Vt.

And nothing herein shall change the evidence of ownership of such stock so far as the corporation is concerned : Vt.

And persons holding stock not so transferred or registered, or holding any stock under hypothecation, mortgage, or other lien, must have the transfer, hypothecation, mortgage, or other lien made or registered on the books of the corporation, or, upon failing to do so within fifteen days, all such transfers, hypothecations, mortgages, or other liens shall be void as to *bona fide* creditors or subsequent purchasers without notice : Ala. 1671.

NOTE. — *a* “In the entry of transfer :” N.J., Del.

§ 8154. **Record of Transfer.** (See also §§ 8040, 8155.) All records of transfers of stock in a corporation created by the sole authority of this commonwealth shall be made and kept therein. The officer of every such corporation whose duty it is to record such transfers shall at the time of his appointment be a resident within the commonwealth ; and when he ceases to be such resident, the office shall become vacant : Mass. 105, 23.

#### § 8155. **Corporation Records.** (See §§ 8040–8042.)

§ 8156. **A List of Stockholders** must be kept at its principal office by every corporation (1) doing business in the state : N.H. 149, 12 ; Me. 46, 10 ; 1889, 263 ; Vt. 3294 ; Wis. 1750.

(2) Organized in the state : Mass. 105, 21 ; R.I. 152, 15 ; N.J. Corps. 36 ; N.Y. 1890, 564, 29 ; Ind. 3010 ; Minn. 2644 ; Md. 23, 72 ; O. 3254 ; Io. 1078 ; Mo. 2503 ; Ore. 3228 ; Nev. 817 ; Wash. 2436 ; Mon. G. L. 471 ; Fla. 34, 25 ; N.M.†† 224 ; Ariz. 242 ; D.C. 579.

And also a stock-transfer book : R.I. ; N.Y. ; Va. 1125 ; W.Va. 53, 27 ; Mo. ; Tenn. 1707 ; Col.‡ 269. And see §§ 8040, 8042.

Such book must (1) at all times during the usual hours of business be open to the examination of stockholders for thirty days previous to an election of directors : N.Y., N.J., Mo. And see §§ 8053, 8054.

(2) It must be open at all times, upon [written : Mass., Fla.] application of a stockholder ; Vt., Mass., Minn., Fla.

(3) It must at all business hours be open to the inspection of creditors, stockholders, or their representatives (who shall be permitted to take extracts : Me., Nev., Col., Mon., N.Y., O., Ind., N.M., D.C.) : Me., N.Y., Md., Ind., Ore., Nev., Col., Wash., Mon., N.M., Ariz., D.C. 580.

The officer or company refusing to comply with this section is subject to a penalty : Mass., N.Y., N.J. ; Ind. 3011 ; Md. ; Mo. 2504 ; Col. ; Wash. 2437 ; Mon. ; Fla. ; N.M. ; D.C. 583, 584.

See also § 8042.

In such book, (1) the names of stockholders must be alphabetically arranged, showing their places of residence, number of shares, and date of transfer : N.Y., Ind., Wis. 1759, Md., Nev., Col., Wash., Mon., N.M., D.C. 579.



(2) The original stockholders, their respective interests, the amount which has been paid thereon (this clause also in N.Y.), and all transfers thereof: Io. ; Ky. 56,11 ; Tenn. 1707 ; Ore. ; Mon. ; Ariz. ; Minn. 2454.

(3) Also other transactions in which it is presumed a stockholder or creditor may have an interest ; Tenn.

Including all who shall have been stockholders for one year (six years : N.Y., D.C.) previous : N.M., N.Y., Col., D.C. Three years : Md.

(4) The amount of stock actually paid in, and what proportion has been paid in cash : Col., N.M., D.C.

The treasurer of every railroad corporation, and the clerk of every other dividend-paying corporation, except banks, until its capital stock is fully paid and a certificate thereof filed and recorded, shall annually, in the month of May, cause to be filed and recorded in the office of the clerk of the town or city in which such corporation has its principal place of business, a list of the names and places of residence of all its stockholders, certified under oath : N.H. 150,10.

Any person whose name shall be returned on such list shall be deemed a stockholder in such corporation until he shall cause to be filed and recorded by such town clerk a certificate of the transfer of all his stock, the time of such transfer, and the names and places of residence of the persons to whom he sold, signed by the treasurer or clerk of the corporation, which certificate shall be made and delivered to him by such treasurer or clerk upon request, at any time after such transfers are delivered to him for record : N.H. 150,11.

In addition to the records required to be kept by [§ 8042], corporations for profit must keep a book to be known as the "stock and transfer book," in which must be kept a record of all stock ; the names of the stockholders or members alphabetically arranged ; instalments paid or unpaid ; assessments levied and paid or unpaid ; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom ; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor : Cal. 5378 ; Dak. Civ. C. 417 ; Ida. 2640 ; Oka. 992.

The books of the company shall be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof: Io. ; Minn. 2454 ; Vt. ; Ky. 56,11 ; Ariz.

Every corporation shall register the names and residence of all its shareholders, and all changes therein of which it is notified : N.H. 149,12 ; Mass. 105,22.

So, "the books of the corporation shall show the original and subsequent stockholders : " Tenn. 1707.

Such book must show the stockholders' residences, and the amount held by each : N.H., Me., Vt.

"Every stockholder of a corporation shall inform the treasurer, cashier, or other officer authorized to issue stock certificates, of the place of his residence, and of every change therein forthwith after the change is made" : N.H. 149,11.

The treasurer, etc. shall keep record of all transfers of shares, and of every certificate issued ; and keep the old certificates, transfers, and deeds on file : N.H. 149,12.

But the provisions of this section do not apply to corporations actually doing business in the state, and having a treasurer's office therein, where such stock-book is kept : Me. 1889,263.

Such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same : Io. 1078 ; Minn. ; Ky. ; Ore.

And any stockholder or creditor may demand a certified copy of the officer holding them : Nev. Compare also §§ 8042, 8145.

Such book shall be presumptive evidence (in favor of the plaintiff : N.Y., Ind., Mon., D.C.) of the facts therein stated in any suit against the company or a stockholder thereof : N.Y., Ind., Nev., Col., Wash., Mon. G. L. 471, N.M., D.C. 582.

§ 8157. **Lost Stock.** When a certificate of the ownership of shares of the capital stock of a corporation is lost or destroyed, and the owner desires to obtain a new certificate, he shall advertise the loss or destruction, with a description of the certificate, in two newspapers, one published in the vicinity of the residence of the owner, and one published in the vicinity of the place of business of the corporation, at least five weeks successively, and a notice of the loss with a description of the certificate shall be posted up in the office of the corporation for the same length of time ; and three months after such publication and notice, if no other person claims the shares, the corporation shall issue to the owner a new certificate of such shares, which shall state that it is issued in lieu of one lost or destroyed ; and the corporation shall not be liable thereafter on account of such original certificate : Vt. 3265.

Corporations may issue new certificates in place of any lost or destroyed by authority of the directors, and they may, in their discretion, require a bond of indemnity : N.J. Supp. Corps. 8 ; N.C. 1885, 265.

If a person claims such shares by virtue of such original certificate before issuing such new certificate (Vt.), or if the corporation refuses to issue a new certificate, a person interested may petition the court of chancery for relief in the premises, and such court may at any time, on such petition, and notice, in a summary manner, make such order in the premises as the case requires : Vt. 3266 ; N.J. Supp. Corps. 10, 11.

If the corporation refuse so to issue a new certificate, the owner of the one lost has a remedy by petition before the chancellor or a judge of the supreme court, who may order such new one to be issued, the petitioner giving bond : N.J. Supp. Corps. 10, 11 ; N.Y. 1890, 564, 50-1.

A special proceeding before the chancellor is provided to protect the corporation against claims of all persons, and avoid the old certificate, when such stock lost exceeds \$20,000 par value : N.J. Supp. Corps. 9.

In Ohio the owner of a lost or destroyed certificate of stock may file a petition in the probate court, and upon proof thereof a new certificate is ordered, and the corporation is relieved from liability of paying dividends on such new certificate so long as the lost one is not produced : O. 1891, p. 336.

When a person to whom such a certificate is issued alleges it to have been lost, he shall file in the office of the company, first, an affidavit, setting forth the time, place, and circumstances of the loss ; second, proof of his having advertised the same in a newspaper once a week for two successive months<sup>a</sup> ; and third, a bond to the company with one or more sufficient sureties, with condition to indemnify all persons against any loss in consequence of issuing a new certificate in place of the former ; and thereupon the board may direct such new certificate, and the same shall be issued accordingly : Va. 1135 ; W.Va. 53, 38.<sup>a</sup>

NOTE.—<sup>a</sup> For four weeks : W.Va.

§ 8158. **Married Women and Non-residents.** (See also § 6456.) A married woman may transfer her shares, by herself or by her attorney, without signature of her husband, as if unmarried : Cal. 5325 ; Nev. 810 ; Dak. Civ. C. 394 ; Ida. 2612 ; Oka. 966.

Any proxy or power given by a married woman concerning any share of stock in a corporation owned by her is valid and binding without the husband's signature : Cal., Nev. 810, Dak., Ind., Oka. 966.

All dividends upon shares held by a married woman may be paid to her or her attorney as if unmarried ; the husband need not join in receipt therefor : Nev. 810 ; Ida. 2612.

**Art. 816. Dividends.**

§ 8160. **Restrictions.** No dividend can be paid until the capital stock has been wholly paid in : Wis. 1765.

And no dividend can thereafter be paid (1) except out of net profits properly applicable thereto, and which shall not in any way impair or diminish the capital : N.Y. 1890,564,23 ; Wis. ; Minn. 2644.

(2) "Except from surplus profits, arising from the business of the corporation : " N.Y. ; N.J. Corps. 7 ; O. 3269-1 ; Del. V. 17,147,7 ; Minn. ; Nev. 814 ; N.M. 204.

(3) "Except from the legitimate proceeds of its investments : " Ga. 4604a.

No dividend can be paid (4) if the payment of it will leave insufficient funds to meet the liabilities of the corporation : N.H. 150,3 ; Vt. 3287 ; Ct. 1958 ; Ill. 32,19 ; Io. 1072 ; Kan. 23,31 ; Neb. 1,16,141 ; Md. 23,67 ; Tex. 5,94 ; Mo. 2515 ; Ark. 982 ; Col. 253 ; Ore. 3231 ; Mon. G.L. 261 ; Wy. 515 ; Fla. 34,19 ; D.C. 571.

(5) Or will diminish the amount of its capital stock : N.Y., Ill., Md., Va., D.C.

(6) Or while the corporation is insolvent : N.H., Ct., N.Y., Vt., Ill., Md., Col., Ark., Tex., Mo., Mon., Ore., Wy., Fla., D.C.

(7) The directors may not divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation, or reduce such capital stock (without the consent of the legislature : Del.), (except as in § 8124 : N.J. ; Nev.) : Md. 26,58 ; N.Y. ; N.J. ; Del. ; Va. 1138 ; W.Va. 53,40 ; Nev. ; N.M.

(8) No corporation shall declare any dividend while its capital is impaired : Ct. 1932.

See also Arts. 812, 823.

No part of the capital stock shall be withdrawn, or refunded to any of the stockholders, when the property of the corporation is insufficient or will be thereby rendered insufficient for the payment of all its debts : N.H. 150,3. Compare § 8123.

No dividend exceeding ten per cent can be paid until the corporation has a surplus fund of twenty per cent : Ct. 1931.

No company shall declare any dividend when its debts, whether due or not, shall exceed two thirds of its assets : N.C. 681.

Corporations not created for literary, benevolent, or banking purposes shall not so divide any of their corporate property as to reduce their stock below its par value, until all debts are paid, and then only for the purpose of closing their concerns : Me. 46,51.

The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock ; [nor must they create debts beyond their subscribed capital stock : Cal., Dak., Oka.], or reduce [or increase : Cal., Ida., Dak., Oka.] the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or who were not present when the same did happen) are in their individual and private capacity jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced [or debt contracted : Cal., Dak., Oka.] ; [and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section : Cal., Dak., Oka.] : Cal. 5309 ; Wash. 2433 ; Dak. Civ. C. 409 ; Ida. 2596 ; N.M. 204 ; Oka. 983. (There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence : N.J., Cal., Nev., Wash., Dak., Ida., N.M., Oka.) See Art. 833.

§ 8161. **Penalty.** (See also § 8236.) If any dividend be paid contrary to the above provisions, every stockholder receiving the same is liable to restore the full amount thereof, unless the capital be subsequently made good: Wis. 1765; Io. 1072; Va. 1138.

And the officers are subject to a fine or imprisonment: Ct. 1932; Io.; Ga. 4604b.

And also to an action for damages by parties injured thereby: Ct.; Io.; Ga. 4604c (double damages).

If the directors of the corporation shall knowingly declare or pay any such dividend (1) before the capital stock is fully paid in: Wis.

(2) Or when the corporation is insolvent or in danger of insolvency (see § 8160): Vt.; Ct.; Ill.; Wis.; Minn. 2664; Kan. 23,31; Tex. 594; Md.; Mo.; Ark. 982; Ore.; Col.; Mon.; Wy.; Fla.; D.C. For citations, see also § 8160.

(3) Of any part of the capital stock: N.Y., N.J., Del., Va., Nev., D.C.

(4) By which the capital shall be diminished: N.Y., Ill., W.Va., Ore., Col., Mon., Wyo., Del.

Or (5) in violation of any of the provisions of § 8160: N.H., N.Y., N.J., O., Del.

Or of § 8114: N.Y.

They are jointly and severally liable (1) to all the creditors of the corporation at the time of declaring or paying such dividend (*a*) to the amount of their debts: Vt. 3287; Ct. 1958; Wis.<sup>a</sup>; Minn.; Ark. 982.

To the amount of any loss they may respectively sustain thereby: O. 3269,4.

(*b*) To the amount of such dividend<sup>c</sup>: N.Y.<sup>c</sup>; N.J.<sup>b,c</sup>; Del.<sup>b,c</sup>; Kan.; Nev.

(2) They are jointly and severally liable for all debts of the corporation then existing or contracted while<sup>f</sup> they continue in office: N.H.<sup>d</sup> 150,5; N.Y. 1890,564,23; Kan.; Ill.; Md.; Va. 1138; W.Va.<sup>d</sup>; Mo.<sup>d</sup> 741; Tex.<sup>d</sup> 594; Ore. 3231; Col.<sup>f</sup> 253; Mon. G. L. 461; Wy. 515; Fla. 34,19; D.C. 571.

(3) And also liable directly to the corporation for the amount of the dividend<sup>c</sup>: N.Y.<sup>c</sup>; N.J.<sup>b,c</sup>; Del.<sup>b,c</sup>

If any part of the capital stock of any such company shall be withdrawn and refunded to the stockholders (before the payment of all the debts of the company contracted previously to the recording and publishing of a copy of a vote for that purpose, as prescribed in [§ 8124]: N.J.), the president and directors of the company shall be jointly and severally liable for the payment of the said last mentioned debts<sup>d</sup>; and the stockholders shall also be liable for any such sums of money as they may respectively receive of the amount so withdrawn: N.J. Corps. 53; Va. 1138; W.Va.<sup>e</sup> 53,40. For stockholders, see §§ 8140, 8147.

Directors who were absent (except in Md., Mon., Wy., Fla., D.C.) at the time of declaring such dividend, or objected thereto, may exempt themselves from this liability (1) by filing (*before* such dividend: D.C.) their objection in writing with the secretary (with the clerk of the court: Md.) of the corporation<sup>e</sup>; N.H. 150,6; Kan. 23,31; Md. 23,68; Mo.; Tex. 594; Ore.; Mon.<sup>e</sup>; Wy.<sup>e</sup>; Fla.; D.C.<sup>e</sup> 572.

(2) By causing their dissent to be entered on the records (and having it published in a newspaper within two weeks thereafter: N.J., Del.): N.J., Nev., Del., W.Va.

(3) Directors who "dissent from" the dividend are not liable in any event: Va. So, only the directors so voting are liable: N.Y., Col., Ore. Only those present at the vote: Nev., Fla.

(4) Nor are they liable if they "did not know it" to be insolvent: Ct.

If any corporation, by vote or by its officers, shall violate either of the provisions of the three preceding sections [§§ 8147, 8160, 8208], the directors shall be individually liable, to the amount of such loan, dividend, or sum refunded or withdrawn, or of the

excess of debts and liabilities above half the value of its property, for all the debts and contracts of the corporation then existing or contracted while they respectively remain in office : N.H. 150,5.

When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached, or is not by law attachable, any judgment creditor may file a bill in equity in the supreme judicial court, setting forth the facts, and the names of such persons as are alleged to have possession of any such property, or chuses in action, either before or after division ; names of defendants may be struck out or added by leave of court ; costs awarded at discretion, and service made on the defendants named, as in other equity suits. They shall in answer thereto disclose on oath all facts within their knowledge relating to such property in their hands or received by a division among stockholders. When either of them has the custody of the records of the corporation, he shall produce them and make extracts therefrom and annex them to his answer, as the court directs : Me. 46,52.

The court shall determine, with or without a jury, whether the allegations in the bill are sustained, and it may decree that any such property shall be paid to such creditor in satisfaction of his judgment, and cause such decree to be enforced as in other chancery cases. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court : Me. 46,53.

That in any case where several trustees, managers, or directors of any insolvent banking or other corporation now are or shall be liable to action at law or in equity for unlawfully making any dividend, or dividing, withdrawing, or reducing capital, or for any default, negligence, or malfeasance in the discharge of their duties, and in any case where several sureties on any bond for the performance of any duty or employment now are or shall be liable as aforesaid for any default, negligence, or malfeasance of their principal, the receiver or trustees, or such person, corporation, or officer as may be empowered to bring such action on such bond, may settle and compromise with, release, and discharge any one or more of the parties so liable, and such settlement, compromise, release, or discharge shall not affect or constitute any defence to any such action or right of action at law or in equity against the other parties so liable ; but in such case the recovery against those not so settled with and discharged, or any of them, shall not exceed the proportion to which they or he would have been bound according to the rules of equity if no such settlement and discharge had been made : N.J. Supp. Corps. 85.

That when any such settlement shall be made pending suit, it may be made known to the court by pleading and moved at the trial or hearing, and judgment or decree may be rendered against the other defendants or defendant not so settled with for the proper amount for which they or he may be found liable : N.J. Supp. Corps. 86.

That no compromise or settlement shall be made as aforesaid without the approval first had and obtained from the court out of which such receiver or trustee was appointed : N.J. Supp. Corps. 87.

NOTES. — <sup>a</sup> Such directors not having reason to believe that there were sufficient net profits properly applicable thereto to pay the same without impairing or diminishing the capital. <sup>b</sup> Such liability exists for six years after the dividend. <sup>c</sup> With interest thereon. <sup>d</sup> To the amount of such dividend only. <sup>e</sup> And also with the county clerk or recorder. <sup>f</sup> While the capital remains so diminished : Col.

**§ 8162. Declaration.** The board shall semiannually declare dividends of so much of the net profits of the company as it may deem it prudent to divide. If any stockholder be indebted to the company, his dividend, or so much as may be necessary, shall be passed to his credit in payment of the debt : Va. 11,36 ; W.Va. 53,39.

They shall also, when required by one third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the cor-

poration as they shall deem expedient, or as the by-laws may prescribe : Kan. 23,23 ; Tex. 587.

In the calculation of the profits of any moneyed corporation previous to a dividend, interest then unpaid, although due or accrued on debts owing to the company, shall not be included : O. 1890,3269(2).

In order to ascertain the surplus profits, from which alone a dividend can be made, there shall be charged in the account of profit and loss, and deducted from the actual profits, —

1. All the expenses paid or incurred, both ordinary and extraordinary, attending the management of the affairs and the transaction of the business of the corporation.

2. Interest paid, or then due or accrued on debts owing by the corporation.

3. All losses sustained by the corporation, and in the computation of such losses all debts owing to the corporation shall be included which shall have remained due without prosecution, and no interest having been paid thereon for more than one year, or on which judgment shall have been recovered, and shall have remained for more than two years unsatisfied, and on which no interest shall have been paid during that period ; and no such corporation shall advertise a larger amount of capital stock than has actually been subscribed and paid in ; also, shall not advertise a greater dividend than what has been actually earned, and credited or paid to its stockholders or members : O. 1890(3269-3).

All manufacturing corporations within this state shall, on the first day of August in each and every year, unless some other specific day for that purpose be fixed in their charter or by-laws, and in that case then on the day so fixed, after reserving over and above their capital stock paid in, as a working capital for said corporation, a sum to be specified by their board of directors, and not exceeding the amount of one half of the capital stock paid or secured to be paid, declare a dividend of the whole of their accumulated profits exceeding the amount so reserved as a working capital, and pass the share or dividend of each stockholder of such profits to the credit of their respective stockholders, and pay the same to such stockholders on demand : N.J. Corp. 52.

When the time for declaring dividends is fixed by the charter, a corporation may change it by a two-thirds vote of the stockholders at a regular meeting : N.J. Supp. Corps. 4.

**§ 8163. Person Entitled.** A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable : Dak. Civ. C. 401 ; Oka. 973.

No corporation shall pay a dividend to a shareholder whose residence is unknown or uncertain until he informs the corporation thereof : Mass. 105,22.

And it may require evidence that a non-resident stockholder is alive : Ida. 2613.

Each corporation in this commonwealth shall once in every five years publish in some newspaper in the city of Boston," and also (or : Va.) in some newspaper, if there is any, in the county where the corporation is established, a list of all dividends and balances which have remained unclaimed for two years or more, with the names of the persons to whose credit the dividends or balances stand ; which publication shall be continued in three successive papers : Mass. 105,27 ; Va. 1140.

And every dividend declared must be published in the same way, giving notice of the time and place of payment : Va.

Cashiers of banks and clerks or treasurers of other corporations shall ascertain the residences of all stockholders in either ; and no dividend shall be paid to any stockholder whose residence, for the time being, is not entered on the books thereof : Me. 46,30.

Whenever any joint stock corporation shall declare a dividend, it shall be the duty of the treasurer of such corporation, within ninety days after such dividend shall become due and payable, to give notice to any stockholder then entitled to but who has

not called for the same, by depositing in the post-office in the town where such corporation is located a written or printed notice, postage paid, addressed to him at his last known place of residence, that such dividend remains due and payable : Ct. 1964.

NOTE. —<sup>a</sup> In Virginia, Richmond.

§ 8164. **Effect.** No dividend declared by any corporation from its capital stock, or in violation of law, no withdrawal of any portion of such stock, directly or indirectly, no cancellation or surrender of any stock, and no transfer thereof in any form to the corporation which issued it, is valid as against any person who has a lawful and *bona fide* judgment against said corporation, based upon any claim in tort or contract, or for any penalty, or as against any receivers, trustees, or other persons appointed to close up the affairs of an insolvent corporation : Me. 46,46.

Any person having such judgment, or any such trustees, receivers, or other persons appointed to close up the affairs of an insolvent corporation, may, within two years after their right of action herein given accrues, commence an action on the case, or bill in equity, without demand or other previous formalities, against any persons (if a bill in equity, jointly or severally, otherwise severally) who have subscribed for or agreed to take stock in said corporation and have not paid for the same ; or who have received dividends declared from the capital stock or in violation of law ; or who have withdrawn any portion of the capital stock, or cancelled and surrendered any of their stock, and received any valuable consideration therefor from the corporation, except its own stock or obligation therefor ; or who have transferred any of their stock to the corporation as collateral security or otherwise, and received any valuable consideration therefor as aforesaid ; and in such action they may recover the amount of the capital stock so remaining unpaid or withdrawn, not exceeding the amounts of said judgments or the deficiency of the assets of such insolvent corporation. But no stockholder is liable for the debts of the corporation not contracted during his ownership of such unpaid stock, nor for any mortgage debt of said corporation ; and no action for the recovery of the amounts hereinbefore mentioned shall be maintained against a stockholder unless proceedings to obtain judgment against the corporation are commenced during the ownership of such stock, or within one year after its transfer by such stockholder is recorded on the corporation books : Me. 46,47.

A defendant in such suit may prove that he has already in good faith paid, by himself or through another person who has assumed his stock or subscription, to any person holding a *bona fide* judgment, or to any such trustee or receiver, or other person authorized to receive it, or to the corporation itself, the whole or any part of any amounts for which he would be liable under this chapter ; or that he has already in good faith and without collusion been sued for, and is still in peril of being compelled to pay, such amounts in whole or part to some other person, in which latter case the suit may be continued to await, on payment of defendant's costs, from term to term ; or he may prove that the amounts illegally received by him from said corporation were received more than two years before the claim arose on which such judgment was obtained, or if the suit is by trustees, receivers, or other such person, more than two years before the commencement of the legal proceedings by virtue of which such corporation passed into the hands of trustees or receivers ; or he may prove the invalidity of such judgment in any particular which could avail the corporation on a writ of error, or that said judgment was not *bona fide* ; or he may prove that he has *bona fide* claims in contract or tort, several, or joint with other persons, against said corporation, absolute or contingent, or which could be availed of by set-off in court or on execution, for the whole or any part of the amounts for which he would be liable under this chapter ; or in case his stock was transferred to such corporation as collateral security or as payment, he may either prove that the same was so transferred in good faith as security or

payment for or of an anterior liability incurred without any concurrent agreement for the transfer of such stock, and for which the corporation was unable to obtain other sufficient security or payment, or in such case he may prove that whatever sum was received thereon has been in whole or part repaid to such corporation; and proof of any of such matters is a full or partial defence for such defendant : Me. 46,48.

§ 8165. **Assessments.** (See also § 8112.) When any corporation shall impose a tax on the shares of its stock, it may appoint a collector thereof, who shall receive from its treasurer a tax-bill and warrant, to be signed by any justice of the peace, directing such collector to collect the sums specified in such tax-bill; and on neglect of any stockholder to pay the same within the time limited by such corporation, the collector may levy said warrant on such shares, or such part thereof, as may be necessary to satisfy said tax and costs, and shall proceed therein in the manner provided by law for the collection of executions when levied on the shares of the capital stock of such corporation; and the fees of said collector shall be the same as are allowed to officers on executions : Ct. 1930.

§ 8166. **Profit Sharing.** Any corporation organized after May 31, 1886, under general or special law, may, by its board of directors, distribute to the persons employed in its service, or to any of them, such portion of the profits of the business of the corporation as the board of directors may deem to be just and proper : Ct. 1935.

Any corporation organized on or prior to said last named date may give to its board of directors the power to distribute to the persons employed in its service, or to any of them, such portion of the profits of the business of the corporation as said board may deem just and proper : *provided*, such power is given by a majority vote of all the shareholders, at a meeting warned for the purpose : Ct. 1936.

## CHAPTER II.

### OF THE POWERS AND DUTIES OF THE CORPORATION AND ITS OFFICERS.

#### Art. 820. Corporate Powers.<sup>a</sup>

§ 8200. **General Powers.<sup>a</sup>** (For by-laws see Art. 807.) (A) Corporations formed under this chapter are bodies corporate and politic (1) for the period for which they are organized : N.Y. 1890,563,8; Pa. Corps. 1; O. 3239; Ill. 32,5; Minn. 2458; Kan. 23,11; Md. 23,45; W.Va. 54,10; Cal. 5296; Ore. 3221; Col. 240; Wash. 2424; Ida. 2584; Uta. 2271.

(2) Under the name assumed in the articles : N.Y.; Wis. 1775; Va. 1146; Ark. 960; Cal. 5296; Nev. 805; Col. 240; Wash.; Dak. Civ. C. 389; Mon. G. L. 447; Wy.<sup>a</sup> 502; N.M. 195; D.C. 554.

The incorporation confers in a few states, it is declared, no power or privilege not possessed by natural persons except as hereinafter specified : Io. 1058; Ky. 56,1; Ariz. 232. Compare § 8212.

(B) All corporations have, however, (1) the privilege of perpetual succession, or for the period limited by the charter or law (§ 8012) : N.H. 148,3; R.I.<sup>b</sup> 152,1; N.Y.<sup>a</sup>; N.J.<sup>a,c</sup> Corps. 1-2; Pa.; O.; Io. 1059; Minn.; Kan.; Neb.<sup>a</sup> 1,16, 124; Md.<sup>b</sup> 23,50; 49; Del. V. 17,147,1; Va.<sup>b</sup> 1068; W.Va.<sup>b</sup> 52,1; Ky. 56,2; Mo.<sup>a</sup> 2508; Tex. 575; Cal. 5354; Nev.; Col.; Wash.; Dak. Civ. C. 402; Ida. 2633;



Mon. ; Wy. 543 ; S.C. 1886,288,8 & 26 ; Ga. 1678 ; Ala. 1664 ; Miss. 1031 ; Fla. 34,3 ; La. D. 684 ; N.M. ; Ariz. 233 ; Oka. 974 ; D.C. But see § 8012.

(2) The interests of stockholders are transferable : Io., Minn., Neb., Ky., S.C., Ariz. Compare Art. 815.

(3) They may "do all needful acts to carry into effect the objects for which they were created : " O. ; Md. 23,53 ; Ga. 1679.

So, they may "have and exercise all the powers necessary and requisite" for such objects : Ill. ; Miss. 1882,26,2. See also § 8211.

(C) They have also power (1) to exempt the private property of its members from liability for corporate debts, except as herein otherwise declared : Io. 1059 ; Ky. ; Ariz. See Art. 814.

(2) To prescribe the mode of transfer of stock (and see § 8071) : Ky., S.C., Ariz.

(3) They "may admit associates and members, and for just cause remove them : " N.H. 148,3.

(4) To admit stockholders or members, and to sell their stock or shares for the payment of assessments or instalments : Cal. 5354 ; Dak. Civ. C. 402 ; Ida. ; Oka.

(5) It has power to wind up and dissolve itself, or be wound up and dissolved (as in Art. 833) : N.J.,<sup>a</sup> Del.

(6) They may determine the manner of calling and conducting meetings, the number (in Indiana) that shall constitute a quorum, and the number of shares that shall entitle members to one or more votes (see § 8053) : Ind.<sup>b</sup> 3002 ; Miss. See § 8071.

(7) Also the manner of voting by proxy : Ind., Miss., the payment of assessments, and the mode of selling shares for non-payment, and the tenure of office of the several officers : Ind.<sup>b</sup>

Every such corporation, when so organized, shall be a body corporate by the name designated in its articles, and shall have the powers of a corporation conferred by these statutes necessary or proper to conduct the business or accomplish the purposes prescribed by its articles, but no other or greater : Wis. 1775. See § 8212.

Any corporation organized under any general law of the legislature, now or hereafter to be passed, shall, in addition to the powers and restrictions thereon to which it may become subject, or of which it shall be possessed by virtue of its organization and the act authorizing the same, be additionally possessed of all the powers, and be subject to all restrictions thereon in this act contained, so far as the same are consistent with the act under which it may as aforesaid be organized : Del. V. 17,147,9.

Joint stock companies, incorporated under this chapter, shall be subject to the provisions of the fifty-second and fifty-third chapters of the code, so far as the same are applicable : W.Va. 54,1.

They shall have all the general powers and be subject to all the general restrictions conferred and imposed, and be governed by the provisions of this chapter and the forty-sixth chapter, so far as they are applicable and not inconsistent with such charter. Provided, however, that nothing contained in this and the preceding section shall be construed to invest any corporation chartered thereunder with the right or power to have land or any other thing condemned for its use or benefit under the provisions of chapter forty-six or any other chapter of this code : Va. 1146.

Corporations have power for "the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in its articles of incorporation : " Nev. 805 ; Wash. 2424 ; Ala. See also § 8071.

(8) Any corporation organized and put into successful operation under this chapter shall have exclusive privileges for the purposes of its creation for the term of twenty years from the date the corporation commenced to carry out in good faith the terms of its articles of incorporation : provided, however, that this investment shall not so operate

as to divest any future legislature of those powers of government which are inherent and essential attributes of sovereignty, to wit, the power to create revenue for public purposes, to provide for the common defence, to provide safe and convenient ways for the public necessity and convenience, and to take private property for the public use, and the like: Fla. 34,30. Compare § 8003.

NOTES. — <sup>a</sup> In the noted states, "the powers enumerated in Arts. 820 and 807, concerning by-laws, vest in every corporation, although not specified in the charter:" N.Y.; N.J. Corps. 2; Del. V. 17, 147,2 & 9; Neb. 16,125; Mo. 2509; Mon. G. L. 483; Wy. 544. But so probably in other states. <sup>b</sup> "Whenever no other provision is specially made." <sup>c</sup> "Except so far as the constitution otherwise provides concerning banks or money corporations:" N.J.

§ 8201. **Suits.** (A) They may (in their corporate name) sue and be sued: N.H. 148,3; Mass. 105,4; Me. 46,2; Vt. 3281; Ct. 1906; R.I.<sup>b</sup> 152,1; Ind.<sup>b</sup> 3902; N.Y.; N.J.<sup>a</sup> Corps. 1; Pa. Corps. 1; O. 3239; Ill. 32,5; Mich.<sup>b</sup> 4860; Wis.<sup>b</sup> 1748; Io. 1059; Minn. 2458; Kan. 23,11; Neb.; Del.<sup>b</sup> 70,1; V. 17,147,1; Md. 23,51; Va.<sup>b</sup> 1068; W.Va.; N.C.<sup>b</sup> 663; Ky. 56,2; Tenn. 1704; Mo.; Tex. 575; Ark. 972; Cal. 53,54; Ore. 3221; Nev. 805; Col. 240; Wash. 2424; Dak. Civ. C. 402; Ida. 2633; Mon. G. L. 447, 482; Wy.; Uta.; S.C.; Ga. 1679; Ala. 1664; Miss. 1031; Fla. 34,3; La. D. 684; N.M. 195; Ariz.; D.C.; Oka.

They may sue for and receive from the members of the corporation all arrears or other debts, dues or demands owing to them, in like manner (1) as from persons not members of the corporation: Kan. 23,30; Mo. 2503; Tex. 593. See § 8148.

(2) "As from any indifferent person who might be a member, any law, usage, or custom to the contrary notwithstanding:" Neb. 1,16,138.

(B) They may appear, prosecute, and defend actions and suits to final judgment and execution in any court or elsewhere: N.H. 148,3; Mass.; Vt.<sup>a</sup>; R.I.<sup>b</sup> 152,1; Mich.<sup>b</sup>; Del.<sup>b</sup>; N.C.<sup>b</sup>; Ark.; Miss.

And may appoint agents and attorneys for that purpose: N.H.

They may appear and defend in all actions and proceedings in the corporate name, to the same extent as a natural person: Wis.<sup>b</sup>; Col. 264.

NOTES. — See § 8200.

§ 8202. **Seal.** They may have a corporate seal: N.H.; Mass.; Me.; Ct.; R.I.<sup>b</sup>; Ind.<sup>b</sup>; N.Y.<sup>a</sup>; N.J.<sup>a</sup>; Vt.; Pa.; O. 3239; Ill.; Mich.; Wis.<sup>b</sup>; Io.; Minn. 3127; Kan. 23,11; Neb.; Md. 23,52; Del.; Va.<sup>b</sup>; W.Va.; N.C.<sup>b</sup>; Ky.; Tenn.; Mo.; Tex.; Ark.; Cal.; Ore.; Nev.; Col.; Wash.; Dak.; Ida.; Mon.; Wy.; Uta.; S.C.; Ga.; Ala.; Miss.; Fla.; La.; N.M.; Ariz.; D.C.; Oka.

They may change the seal at pleasure: N.H., Vt., R.I., Mass., Me., Ct., N.Y.,<sup>a</sup> N.J.,<sup>a</sup> Pa., Ind., O., Ill., Mich., Wis.<sup>b</sup> Io., Minn., Kan., Neb., Md., Del., Va.,<sup>b</sup> W.Va., N.C.,<sup>b</sup> Ky., Tenn., Mo., Ark., Ore., Cal., Nev., Col., Wash., Dak., Ida., Mon., Wy., Uta., S.C., Ala., Fla., N.M., Ariz., D.C., Oka.

"By filing an impression of the same with the secretary of state:" Col.

Or change the corporate name: Kan., Mo. See § 8091.

If no common seal, then the signing of the name of the corporation by any duly authorized officer shall be legal and binding: Tenn. 1704(2).

NOTES. — See § 8200.

§ 8203. **Officers.** (See also Arts. 804,806,823.) They may elect or appoint all necessary officers: Vt., N.H., R.I.,<sup>b</sup> Mass., Me., N.Y.,<sup>a</sup> N.J.,<sup>a</sup> Ct., Pa., Ind., Mich.,<sup>b</sup> Wis.,<sup>b</sup> Minn., Kan., Neb., Md., Del., W.Va., N.C.,<sup>b</sup> Tenn., Mo., Tex., Ark., Ore., Cal., Nev., Wash., Dak., Ida., Wy., S.C. (1886,288,22) Ala., La., Miss.

"In such manner as they determine : " Vt., Mass., Ct., R.I., Ind., Mich., Wis., N.C.,<sup>b</sup> Ark., S.C., N.M.

Fix their compensation : Vt., N.H., Mass., Me., N.Y.,<sup>a</sup> Ct., R.I., N.J., Ind., Pa., Mich., Wis., Minn., Kan., Neb., Md., Mo., Tex., Del., W.Va., N.C.,<sup>b</sup> Tenn., Ark., Ore., Cal., Nev., Wash., Dak., Ida., Wy., S.C., Miss., N.M.

Define their duties and obligations : Vt., N.H., Mass., Me., Ct., R.I., Ind., Mich., Wis., Minn., Del.,<sup>b</sup> W.Va., N.C.,<sup>b</sup> Ark., Ore., Nev., Wash., N.M.

Require security for faithful performance thereof : Md., W.Va., Nev., Wash., N.M.

Determine their tenure of office : Md.,<sup>b</sup> Miss.

Remove them at will (but see § 8046) : Nev., Wash., N.M., Pa., Tex.

Fill vacancies therein : Wis.

Increase or diminish their number by vote of the stockholders : Kan.

See N.H. 148,3 ; Mass. 105,4 ; Me. 46,2 ; Ct. 1906 ; Vt. 3281 ; R.I.<sup>b</sup> 152,1 ; N.Y.<sup>a</sup> 1890,563,8 ; N.J.<sup>a</sup> Corps. 1 ; Pa. Corps. 1 ; Ind.<sup>b</sup> 3002 ; Mich. 4860 ; Wis. 1748 ; Minn.\* 3127 ; Neb. 1,6,124 ; Kan. 23,11 ; Md. 23,54 ; Del.<sup>b</sup> 70,1 ; Va. ; W.Va. 52,1 ; N.C. 663 ; Tenn. 1704 ; Mo. 2508 ; Cal. 5354 ; Ark. 972 ; Tex. 575 ; Ore. 3221 ; Wash. 2424 ; S.C. 1886,288,22 & 26 ; Dak. Civ. C. 402 ; Nev. 805 ; Ala. 1664 ; Miss. 1031.

"They may employ all such agents, mechanics, or laborers as they think proper : " Ark. "May appoint such subordinate officers and agents as the business of the corporation shall require, and fix their compensation : " N.Y.<sup>a</sup> ; Fla. ; S.C. ; Wy. 543 ; Ida. ; Ore. ; Tex. ; Tenn. ; Mo. ; N.M. ; Mon. ; Wash. ; Cal. ; Dak. ; Nev. ; Oka.

To appoint a president of the company from among the directors, trustees, or managers : Md. 23,54. See § 8044.

NOTES. — See § 8200.

§ 8204. **Ownership of Land, etc.** They may, in most states, own so much real estate as shall be (A) necessary (or proper : N.H., Md., Del.) "for the transaction of their business : " N.H.<sup>b</sup> 148,8 ; Ill. 32,5 ; Minn. 2645 ; Neb. 1,16,124 ; Tenn. 1704 ; Col. 240 ; Uta. 2272 ; D.C. 554.

(B) "Necessary and convenient to carry into effect the objects of the incorporation : " Ct. 1952,1906 ; O. 323 ; Minn. 2461§ ; Md. 23,53 ; Mo.<sup>b</sup> 2508 ; Ark. 973 ; Ore. 3221 ; Mon. G. L. 447 ; Wy. 502.

(C) "So much as the purposes of the corporation shall require : " Vt. 3282 ; Ct.<sup>a</sup> 1906 ; N.Y.<sup>a,b</sup> 1890,563,8 ; N.J.<sup>a,b</sup> Corps. 1 ; Pa. Corps. 1 ; Kan. 23,11 ; Del.<sup>b</sup> 70,1 ; V. 17,147,1 ; Mo. ; Tex. 575 ; Cal.<sup>a</sup> 5354 ; Nev. 805 ; Dak.<sup>b</sup> Civ. C. 402 ; Ida.<sup>b</sup> 2633 ; Mon. G. L. 482 ; Wy. 543 ; S.C.<sup>b</sup> 1886,288,22 & 26 ; Ga. 1679 ; Ala. 1664 ; Fla.<sup>b</sup> 34,3 ; N.M. 195 ; Oka.<sup>b</sup> 974.

So, respectively, of personal estate : N.H., Vt., Ct., N.Y.,<sup>a,b</sup> N.J., Pa., O., Ill., Io., Kan., Md., Del.,<sup>b</sup> Minn., Tenn., Mo., Ark., Tex., Cal., Ore., Nev., Col., Dak., Ida., Mon., Wy., Uta., S.C., Ga., Ala., Fla., N.M., Oka.

They may hold personal estate [without restriction] : Neb., Tenn., Ky.

Except as provided in this and the following sections, no corporation, foreign or domestic, established for pecuniary profit, may purchase or hold real estate : Pa. Escheat, 34 ; Ill. 32,26. Compare Vol. I., Art. 115, Escheat, etc.

(D) "They may purchase, hold, and convey lands and other property : " Me. 46,2 ; R.I.<sup>b</sup> 152,1 ; N.J. ; Io. 1059 ; Va.<sup>b</sup> 1068 ; W.Va. 52,1 ; Ky. 562 ; Wash. 2424 ; 1891,35 ; S.C. 1886,288,8 ; Miss. 1882,26,2 ; La. D. 684 ; N.M. 1839,82 ; Ariz. 233.

"Possessing the same powers as individuals now enjoy : " Io., Ky., S.C., Ariz.

"To any amount : " Miss.

"Including patent rights : " Ct.

But "no more real estate than is proper for the purposes for which it is incorporated:" Va. 1070; W.Va. 52,3.

And unless specially authorized, no corporation shall purchase real estate in order to sell the same for profit: W.Va.

(E) The power to hold real and personal estate shall include the power to take by devise or bequest: N.J., Del., Col.

(F) They may hold land "to an amount authorized by law, and may convey the same:" Mich. 4866; Wis.<sup>b</sup> 1748; N.C. 666.

And so also of personal property: Wis.<sup>b</sup>

(G) They may take by gift, devise, purchase, or otherwise, and manage and hold, convey, mortgage, lease, or otherwise dispose of at pleasure, such real and personal property of any kind as shall be necessary to its business or purposes, or the protection or benefit of its property held or used for the corporate business or purposes, and such as shall be taken in payment or security of debts: Wis. 1775.

The amount of property of all kinds may not exceed an income-bearing amount of \$25,000 a year: D.C. (U.S. 1884,28).

When any corporation shall have sold and conveyed any part of its real estate, the supreme court may authorize it to purchase and hold from time to time other lands, upon satisfactory proof that the value of the lands so purchased does not exceed the value of the lands so sold and conveyed within the three years next preceding the application: N.Y. 1890,563,10.

It shall and may be lawful for any and all companies incorporated or organized under the laws of this commonwealth, including those authorized thereby to transport merchandise or other property, and also for the directors, managers, or trustees thereof, with the approval of the stockholders, to invest the surplus or other funds or earnings of such companies in mortgages on improved real estate, in ground rents, in the loans of the United States, in the purchase from holders thereof of any (of) the shares of the capital stock of the respective company, and also the public debt of the state of Pennsylvania or of the city of Philadelphia, or in other good stocks or securities, and to sell and transfer the same, and to reinvest the proceeds of such sales in securities or stocks of like kind, and to prescribe by resolution of the directors, or by the by-laws of the company, or otherwise, the mode of making such investments, purchases, and sales, with the approval of the stockholders, and the amount or amounts thereof to be purchased, and the price or prices to be paid or received therefor, and the reinvestment of the proceeds thereof, and to make such compensation as the said directors, managers, or trustees may deem proper to any director, manager, trustee, treasurer, or other agent or officer of such company, for the keeping, receiving, paying, investing, or reinvesting of any of the moneys belonging to the said company, or for any other services performed by him or them, as agents of the company or otherwise; and any such companies may change or fix the time of holding their annual election for directors to such a day as they may select, a certificate of such change, duly authenticated by the proper officers of the company, shall be filed with the auditor-general of this commonwealth within thirty days after such change shall have been made: Pa. Corps. 85.

Special provision is made in Pennsylvania for the escheat of lands held by corporations, and no corporation, either of this state or elsewhere, can, in any case, purchase lands within the state, either in its corporate name or the names of any persons for its use, without incurring forfeiture; but every such corporation or its feoffee hold the same subject to being dispossessed at any time by the commonwealth: Pa. Escheats, 34. See Vol. I. Art. 115.

So much of the statutes of mortmain, and of any other disabling laws, acts, or statutes as tends to invalidate the titles to any lands, tenements, or hereditaments, in this commonwealth, now held by assignees or trustees for the benefit of creditors (of any corporations chartered by this commonwealth) is hereby repealed: Pa. Escheats, 40.

Whensoever any alien, or any foreign corporation, or corporation of another or of this state, shall have held title to real estate within this state which he or they were not by the laws of this commonwealth authorized to hold, and shall have heretofore conveyed such title to any citizen of the United States before any inquisition shall have been taken against the real estate so held, to escheat the same, such citizen shall hold, and may convey such title and real estate, indefeasibly : Pa. Escheats, 41.

No real or personal property held by any corporation of this state authorized to hold the same shall escheat by reason of the character or residence of its shareholders, nor because the beneficial ownership of said property, in whole or in part, is or has been in any person or persons prohibited from holding the same : Pa. 1887,191. See also Pa. 1891,209 & 211.

But said lands and property shall again become liable to escheat as provided by law, if held for five years after passage of this act : Pa. 1887,191.

Any corporation may take and acquire, by lease, purchase, sale, conveyance, or assignment, and thereafter own, hold, and enjoy, any right, privilege, or franchise heretofore granted to or conferred upon any person or persons whomsoever by any law of this state, in all cases where such right, privilege, or franchise would be in direct aid of the business for which such corporation so acquiring or purchasing the same was organized : Wis. 1776a.

A mining, manufacturing, oil, salt, or internal improvement company may lay out a town, not to include more than 640 acres, at or near their works, and sell lots therein : . . . and any manufacturing company may, with the assent of the holders of two thirds of its stock, had by a vote at a stockholders' meeting, subscribe for or purchase the stock, bonds, or securities of any corporation formed for the purpose of manufacturing or producing any articles or material used in the business of such joint stock company, or dealing in any articles or material manufactured or produced by such joint stock company, or constructing a railroad or other work of internal improvement through or under the county in which the principal place of business of such joint stock company may be, or operating a railroad or other work of internal improvement so constructed, and may, with the like assent, become surety for or guarantee the debts of such corporation, or in any manner aid it in carrying on its business : W.Va. 53,3.

No corporation subject to this chapter, whether incorporated under special charter or general law, shall hold more than one hundred acres of land : W.Va. 53,62.

Except that a company for mining iron, lead, or copper ore, and manufacturing the same into metal, may hold ten thousand acres for every charcoal blast furnace, and three thousand acres for every other furnace ; companies for mining and selling coal, ten thousand acres each ; other mining companies, salt companies, and oil companies, three thousand acres each ; other manufacturing companies, one thousand acres each ; and a springs company, fifteen hundred acres : W.Va. 53,62.

Nor shall any corporation subject to this chapter hold more than five acres in any incorporated town or city, except as provided in the fourth section of chapter fifty-two of this code, and except that societies formed to promote agriculture or stock raising may hold not exceeding thirty acres in any incorporated town or city : W.Va. 53,62.

But nothing in this section contained shall be construed to prevent any company heretofore incorporated from holding such number of acres of land, in addition to the number herein prescribed, as may be authorized by its charter : W.Va. 53,62.

But any such springs company now owning or occupying the real estate of a former springs company may take, hold, and use the same, notwithstanding the quantity thereof shall exceed fifteen hundred acres : W.Va. 53,62.

But no corporation formed under this chapter, except mining and manufacturing companies, and companies for supplying the cities and towns of the state with water, shall have power to hold at the same time more than three hundred acres of land in fee simple, or for a longer term than thirty years : N.C. 666.

All corporations (except railroad, mining, manufacturing corporations, and companies to supply the cities and towns of the state with water) which shall be seised in fee, or for a longer term than three lives in being, or possessed for a longer time than thirty years, of any lands or tenements exceeding three hundred acres in quantity, are required, within said time, to dispose of such excess : N.C. 693.

By a unanimous vote of all the directors at any regular meeting, any corporation existing or hereafter to be formed under the laws of this state may acquire and hold the lots and building on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business : Cal. 5363.

It may take, hold, and possess, and dispose of all real and personal property donated to such corporation by the United States, the state, or any municipal corporation, person, firm, or private corporation, for the purpose of aiding in the objects thereof : Ore. 3221.

No foreign or domestic corporation established or maintained in any way for pecuniary profit of its stockholders or members shall purchase or hold real estate in this state, except as provided for in this act : Col. 260.

It may buy, use, and sell or dispose of personal property, and buy, use, and sell or dispose of all such real estate as shall be necessary for its general business, and such as shall be necessary for the collection of its debts, or judgments or decrees in its favor : Uta.

It may receive donations by gift or will : Ga.

It shall not have power to enter, as a business, into the buying and selling of real estate : Uta. 2272. See § 8215.

It shall make no contract or purchase, or hold property of any kind except such as is necessary in legitimately carrying into effect such purpose, or for securing debts due to the company : Ga. 1676.5.

Every corporation, not otherwise provided for by act of the legislature, may hold real and personal estate necessary and proper for its purposes, not exceeding fifty thousand dollars, manufacturing companies excepted, which may purchase and hold property to the amount of five hundred thousand dollars, including its stock, and excepting also insurance companies, which shall not be chartered with a less capital than one hundred and fifty thousand dollars. And no corporation shall have a trust, use, or benefit, in property held in the name of any other person for its use, either expressly or secretly, to a greater amount than it may lawfully hold : Miss. 1032.

No corporation other than those organized for the construction or operation of railways, canals, or turnpikes shall acquire, hold, or own more than five thousand acres of land in any of the territories of the United States; and no railroad, canal, or turnpike corporation shall hereafter acquire, hold, or own lands in any territory other than such as may be necessary for the proper operation of its railroad, canal, or turnpike, except such lands as may have been granted to it by act of congress : U.S. 1887,340,3.

"All property acquired, held, or owned in violation of the provisions of this act shall be forfeited to the United States : " U.S. 1887,340,1.

NOTES. <sup>a</sup> See § 8200, note *a*. <sup>b</sup> Not exceeding the amount limited in the charter or by statute.

§ 8205. **Lands, etc. acquired for Debt.** The corporation may take other or more land in security or satisfaction for debts due it : N.H. 148,9; Vt. 3282; Ct. 1952; N.J.: Ill.; Kan.; Wis.; Del. V. 17,147,1; N.C. 690; Tenn. 1704; Ark. 973; Va. 1071; W.Va. 52,4; Mo.; Tex.; S.C. 1886,288,22; Ga. 1676; Miss. 1032; Fla. 343; Uta. For citations, see also § 8204.

So, other property : Ct., N.H., Wis., Kan., Va., Mo., Tex., Ga., Miss., Fla., Uta.

By mortgage, pledge, or attachment; and perfect a title thereto by proper legal proceeding : N.H.

In the same manner as they may so take and manage stock in other companies (§ 8217): W.Va.

No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. (And except such rights of way or other property as it may acquire under U. S. laws : Ida.) A corporation may acquire real property, as provided in the Code of Civil Procedure, when needed for any of the uses and purposes mentioned therein : Cal. 5360 ; Ida. 2638.

But all lands, etc. so acquired in excess of that allowed by law to hold (not necessary for the business of the corporation : Ill.) must (1) be offered for sale at public auction at least once every year : Ill. 32,5.

(2) Be sold or disposed of within two years after title perfected : Miss.

(3) Within five years : N.H.

(4) Be sold within thirty years from the date of purchase or acquirement : N.C.

And it must be sold at such auction whenever the price offered equals the claim of the corporation, with costs and expenses : Ill.

The time during which corporations are authorized to hold real estate acquired under execution for debts is commonly extended for terms of five years by successive statute : Pa. Corps. 73.

In case such corporation shall not, within such period of five years, sell such lands either at public or private sale, as aforesaid, it shall be the duty of the state's attorney to proceed by information in the name of the people of the State of Illinois against such corporation, in the circuit court of the county within which such land so neglected to be sold shall be situated, and such court shall have jurisdiction to hear and determine the fact, and to order the sale of such land or real estate at such time and place, subject to such rules as the court shall establish ; and the proceeds of such sale, after deducting the said fees and costs of proceedings, shall be paid over to such corporation : Ill. 32,5.

All lands so purchased in excess of the limited quantity and held by any corporation shall at the end of thirty years from the date of such purchase be forfeited to the state, and may be recovered in an action brought in the name of the state by its proper officer : N.C. 690.

The corporation purchasing such land may at any time within thirty years next ensuing the date of its purchase convey by deed to a *bona fide* purchaser for value under its common seal such estate in said lands as it would have had under its purchase but for the limitation herein contained : N.C. 690.

It shall be the duty of the grand jury in each county to inquire and report to the solicitor what lands at any time are held by any corporation in violation of this chapter ; and it shall be the duty of every solicitor, either upon or without such report, to institute proceedings for the forfeiture of all such lands, and to report the same to the governor from time to time : N.C. 691.

The lands recovered by the state under this chapter shall not be the subject of entry, but shall be sold at public sale for cash, under the direction of the governor and attorney-general, and the proceeds paid into the state treasury ; and the sale shall be reported to the general assembly at its next ensuing session : N.C. 692.

§ 8206. **Transfer.** They may sell or otherwise dispose of such of their land, etc. as is not needed for the uses of the corporation : Ill. 32,5 ; Del. V. 17,147,1 ; Tenn. ; Col. ; S.C. 1886,288,22.

So, in most states any corporation may convey lands to which it has a legal title : Mass. 105,6 ; R.I. 152,1 ; Mich. 4866 ; Ct. 1906 ; Pa. Corps. 1 ; Md. ; Del. ; N.C. 685 ; Wis. 1748 ; Io. ; Minn. 3128 ; Kan. 23,11 ; Mo. ; Tex. ; Nev. ; Wash. ; Ida. ; Mon. ; Wy. ; Miss. 1031 ; Fla. ; N.M. 195 ; Ariz. 234 ; D.C. 554 ; U.S. 1884,28. [Except the right of way of railroads ; see Title II.]

It may mortgage such lands at pleasure ; N.J., Tex., Kan., Md., Mo., Del., Fla., N.M. Compare §§ 8207-8.

It may "manage and dispose of the same : " Vt. 3282, Md., Ark., Ore., Uta.

But the consent of a majority of a quorum of the stockholders or directors is necessary at a special meeting : D.C.

Any private corporation authorized to hold real estate may convey the same by deed, sealed with the corporate seal, and signed (1) by the president or presiding officer, duly acknowledged and recorded : Kan. 22,4 ; 23,38 ; Neb. 16,137 ; Mo. 2514 and 743 ; Tex. 600 ; Miss. 1031,1194.

(2) By an agent duly appointed by vote for the purpose of making the conveyance : Vt. 1926 ; Md. 23,1.

Such appointment may be embodied in the deed : Md.

So in Florida, but no *acknowledgment* is necessary : Fla. 34,23.

Any corporation may convey lands, and all other property which is transferable by deed, by deed of bargain and sale, or other proper deed, sealed with the common seal and signed by the president or presiding member or trustee, and two other members of the corporation, and attested by witnesses : N.C. 685.

But any conveyance of its property, whether absolutely or upon condition, in trust, or by way of mortgage executed by any corporation, shall be void and of no effect as to the creditors of said corporation existing prior to or at the time of the execution of said deed, and as to torts committed by such corporation, its agents or employees, prior to or at the time of the execution of said deed : provided said creditors, or persons injured, or their representatives, shall commence proceedings or actions to enforce their claims against said corporation within sixty days after the registration of said deed, as required by law : N.C. 685.

That all corporations now or hereafter existing under the laws of this state, whether incorporated under special or general laws of the state, shall have the power, and they are hereby authorized and empowered, to lease and dispose of their property and franchises, or any part thereof, to any corporation of this or any other state engaged in or carrying on, or authorized by its charter to carry on in this or any other state the same general business as is authorized by the charter of any such lessor corporation ; and said corporations shall likewise have the power, and are hereby authorized, to make any contract for the use, enjoyment, and operation of their property and franchises, or any part thereof, with any such other corporation of this or any other state, on such terms and conditions as may be agreed upon between the contracting corporations ; and such lessee corporation or corporations is authorized and empowered to make and carry out such leases and contracts ; provided, however, that any such leases or contracts, when made by or under the direction of the boards of directors of the contracting corporations, shall be authorized or approved by the vote of a majority, in amount, of the stock of the lessor corporation present or represented at a regular or called meeting of the stockholders of said corporation ; and provided further, that sixty days' notice of such meeting be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of such meeting ; and provided further, that where the lessee corporation is a corporation of this state, the authority or approval of its stockholders shall in like manner be obtained to the contract or lease ; and provided further, that this act shall not be so construed as to authorize any corporation of this or any other state to lease or purchase any railroad and line that is a competitor for the same business with any line already owned or under control, by lease or otherwise, or two lines of railway that are competitors for the same business in this state : Tenn. 1887,198,1.

§ 8207. **Borrowing Money.** Corporations may borrow money on the credit of the corporation (1) not exceeding the authorized capital stock : N.Y.<sup>a</sup>1890,564,24 ; O. 3256 ; Kan. 23,15 ; Tex. 577 ; Ala. 1664.



(2) Not exceeding one half the capital : Pa. Corps. 39.

(3) The amount is not prescribed : Ill. 32,5 ; Tenn. 1704 ; Col. 240 ; S.C. 1886,288,10 ; Miss. 1882,26,2.

(4) Not exceeding two thirds the capital stock exclusive of its mortgage indebtedness : Minn. 2460§.

At legal rates of interest : Ill. 32,5. At six per cent : N.Y., Pa.

"For the purpose of carrying out the objects of the charter:" S.C.

"When necessary for the transaction of its business:" N.Y. 1890,564,2.

**Debts** cannot in several states be contracted or liabilities incurred to an amount (1) exceeding two thirds of the stock actually paid in (see also above) : Vt. 3291 ; Io. 1061 ; Neb. 1,16,128.

(2) Exceeding the amount of capital stock paid in (except in Mo.) : R.I.\* 155,15 ; N.Y. 1890,564,24 ; Ill. 32,16 ; Mo.<sup>b</sup> 2499 ; Nev. 815 ; Mon. G. L. 470 ; Wy. 523 ; Ala. 1664 ; N.M. 205 ; D.C. 573.

(3) Exceeding one half the value of its property : N.H. 150,4.

Except (1) banks : N.H.

(2) Insurance companies : N.H., Io.

(3) Railway bonds : Io.

Any director assenting to the creation of such indebtedness is personally liable for the excess : Vt. 3291 ; N.Y. ; Ill. ; Nev. ; Mon. ; Wy. ; N.M. ; D.C.

So, the "officers" assenting are liable : Ill.

Unless he have his dissent recorded as in § 8161 : N.Y., Nev., N.M.

They may execute corporate notes therefor : N.Y., O., Minn., § Kan., Tenn., Tex., S.C.

Or bonds : N.Y., Pa., O., Minn., Kan., Tenn., Tex., S.C., Ala., Miss.

And sell, exchange, or hypothecate them : Miss.

Bearing any legal rate of interest : O.

And may secure the same by mortgage on its real or personal property : N.Y., Ill., Pa., O., Tenn., Col., S.C., Miss., Ala.

"And may pledge the property or income of the corporation : " Minn., § Kan., Tex., Ala.

NOTES. — <sup>a</sup> Of debts *unsecured by mortgage* only. <sup>b</sup> Of *bonded* indebtedness.

**§ 8208. Mortgages.** Corporations may also mortgage their franchises : N.Y., N.J., Del., Col., S.C., Ala., Miss.

But a mortgage requires a two-thirds vote of stockholders at a special meeting called by published thirty days' notice, as in § 8122 : S.C. 1886,288,9 & 10.

So, the written consent of two thirds of the stock : N.Y. 1888,394. (This act is an amendment of N.Y. 1875,611 ; which is repealed by 1890,564 & 567. *Quere* whether the act of 1888 is not repealed, though the repealing acts of 1890 do not say so. The corporation statutes of New York, New Jersey, and Pennsylvania are in an amazing confusion.)

But not at a rate of interest exceeding eight per cent, payable semiannually : Ala.

And such mortgage or pledge must receive a majority vote of all the stock at a special meeting with thirty days' ordinary notice : Ala. 1664.

In New York a special process is provided for obtaining consent of the court in cases where such consent is necessary to the sale or mortgage of real estate by a corporation : N.Y. 1890,95 (C. C. P. 3390-7).

The amount of the obligations issued and outstanding at any one time secured by such mortgages, excepting mortgages given as a consideration for the purchase of real estate, and mortgages authorized by contracts made prior to the time when this act shall

take effect, shall not exceed the amount of its paid up capital stock, or an amount equal to two thirds of the value of its corporate property at the time of issuing the obligations secured by such mortgages, in case such two thirds value shall be more than the amount of such paid up capital stock.

No such mortgages, excepting purchase money mortgages, shall be issued without the written consent, duly acknowledged, of the stockholders owning at least two thirds of the stock of the corporation, and such consent shall be filed and recorded in the office of the clerk or register of the county where it has its principal place of business : N.Y. 1890,564,2.

Any issue of such bonds and such mortgages beyond the amount herein specified shall render every director voting the same personally liable to any holder of such bonds or such mortgages for any damage caused by such over-issue to such holder : N.Y. 1890,564,24.

The president and directors (with consent of two thirds the stock : N.Y.) may confer on the bondholders of bonds issued for money for the use of the said company the right to convert the principal into stock at any time not exceeding ten years (twelve years : N.Y.) from the date of the bonds, under such regulations as they may adopt : La. D. 693 ; N.Y. 1890,564,2 ; and nothing in this act shall be so construed as to authorize an increase in the capital stock of any railroad company : La. But in New York the stock is increased accordingly.

Provided, that it shall be lawful for such corporations as belong to the classes named in clauses four, five, six, seven, nine, and eleven of corporations for profit, of the second class, as set forth in section two of the act of which this is a supplement, and also for such corporations as belong to the class named in clause twenty-four, section two, of the act of assembly approved April 17, 1876 [see § 8010], so to borrow money, and so to secure the payment of the same by a mortgage or mortgages on its property and franchises, to an amount not exceeding double the amount of capital stock of the corporation actually paid in, and at a rate of interest not exceeding six per centum : Pa. 1889,237.

Any corporation which shall have have mortgaged any part of its estate, corporate property, and franchises, for the security of all or any portion of its bonded indebtedness, may mortgage its remaining estate, corporate property, and franchises, or any part of the same, as a further and additional security for the same bonded indebtedness : Pa. Corps. 40.

Upon the written assent of not less than three fourths of the stockholders, representing at least three fourths of the capital stock of the company actually paid in, any company may borrow money, not exceeding one half of the capital stock actually paid in, on such security, by way of mortgage or otherwise, as may be agreed upon, and at a rate of interest not exceeding that allowed by law to be contracted for, and may, in the instruments evidencing the contract, stipulate that the holders of such instruments shall have the right to convert the amount borrowed, or any part thereof, into either common or preferred stock, such stock having been provided for by the proper action and certificate of the company ; and any action of the directors for borrowing money, issuing bonds, or involving an expenditure of money, shall be by a yea and nay vote, and record thereof shall be made showing the vote of each director voting upon the question : O. 3257.

Every railroad, plank-road, macadamized, and turnpike company, all companies for the manufacture of railroad or other iron, and any company for the manufacture of gas, and bridge companies, organized under the laws of this state, heretofore incorporated or hereafter to be incorporated within this state, shall have full power and authority from time to time to borrow money upon its own credit, at any rate of interest per annum not exceeding the legal rate of interest allowed by the law of the state where the loans may be negotiated or the money borrowed, to be agreed upon between the parties, for

the sole purpose of constructing its road and furnishing material therefor; and for the purpose of enabling such manufacturing company to put their mills in operation and to carry on such manufacturing business with all necessary machinery and fixtures necessary to carry on the operations of such company; and as an evidence of such loans, or for the purchase of materials and necessary machinery on time, may issue its corporate bonds or promissory notes; and to secure the repayment thereof, with the interest which shall accrue, may mortgage its road, income, mills, real estate, and other property; and may, by its president or other officers or agents, sell, dispose of, or negotiate such bonds, notes, or the stock of such company, at such times and at such places, either within or without this state, and at such rates and for such prices, as in the opinion of such company will best advance its interests: Ind. 3019.

A corporation may mortgage its franchises, tolls, revenues, and property, both real and personal, to secure the payment of its debts, or to borrow money for the purposes of the corporation, and no other, with the consent of a majority of its stockholders, or, if not a stock corporation, of a majority of its members, and may establish, with the like consent, a sinking fund for the payment of its debts: Wis. 1748.

Provided, further, that the provisions of this section shall not apply to the debentures or bonds of any company, duly incorporated under the provisions of this chapter, the payment of which debentures or bonds shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers of said debentures or bonds, such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unencumbered real estate worth at least twice the amount loaned thereon: Io. 1061.

That such corporation is authorized to issue bonds in lien and in payment of any bonds of such company, or bonds issued and disposed of for the construction of its line of road, outstanding, bearing such rate of interest as may be agreed upon: Minn. 2460§.

That in case the articles of association so provide, the corporation may admit into the board of directors, as members thereof, one or more persons to be chosen by the bondholders, under such regulations as may be agreed upon between the trustees of the bondholders and such corporation: Minn. 2460§.

Provided, however, that the provisions of this section shall not apply to the debentures or bonds of any loan or trust company, duly incorporated under the provisions of this chapter, the payment of which debentures or bonds shall be secured by a transfer of real estate, or by other securities for the benefit and protection of purchasers of said debentures or bonds; such collaterals to be at least equal in amount to the par value of such bonds or debentures, and all real estate mortgage securities to be first liens on the property on which loans are made: Kan. 23,15.

No corporation shall interpose the defence of usury in any suit or proceeding at law or in chancery; nor shall any bond, note, debt, or contract of a corporation be set aside, impaired, or adjudged invalid by reason of anything contained in the laws prohibiting usury: W.Va. 52,22.

Mortgages of incorporate companies upon their property or earnings, whether in bonds or otherwise, hereafter issued, shall not have power to exempt the property or earnings of such incorporations from execution for the satisfaction of any judgment obtained in courts of the state against such incorporation for labor performed, nor for material furnished such incorporation, nor for *torts* committed by such incorporation, its agents or employees, whereby any person is killed or any person or property injured, any clause or clauses in such mortgage to the contrary notwithstanding: N.C. 1255.

Any private corporation created for private profit, shall be empowered upon a vote of a majority of the whole capital stock issued, assembled in any properly called or regular meeting of the stockholders voting therefor, to issue or dispose of bonds for any corporate purpose, and to make a mortgage upon its property or its prop-

erty and franchises to secure the same, and upon a sale of said property, or property and its franchises thereunder, the purchaser of said franchise shall be and is constituted the corporation, with all the powers, rights, duties, immunities, and obligations of the original corporations, provided that nothing in this act be so construed as to change the laws in regard to railroad and turnpike companies : Tenn. 1885,47,1.

No mortgage or deed of trust conveying the income or future earnings of any corporation, or the rolling stock of any railroad company, shall be valid against debts contracted in carrying on the business of the corporation, nor against liabilities incurred by railroad companies as carriers of freight and passengers, or for damages sustained by persons or property ; but such mortgage or deed of trust shall be valid as against any claim in excess of five thousand dollars for damages to any person : Miss. 1033.

Any railroad, plank-road, turnpike, canal, elevator, or warehouse company, or any company for drainage, sewerage, land reclamation, and levee building, established under the laws of this state, whether under and by special or general act, may borrow from time to time such sums of money as may be required for construction, repairs, or acquisition of property or franchises ; and for this purpose may issue bonds or other obligations, secured by mortgage or pledge, as the case may be, of the franchises and all the property, real and personal, and incomes, revenues, contributions, and receipts of said companies, and payable in such terms and at such times and places as the board of directors, trustees, managers, or commissioners may direct or designate, with power to sell, pledge, or otherwise dispose of said bonds on such terms as the railroad respectively may direct or deem expedient : La. D. 692.

Such mortgage need only be recorded in the parish where is the domicile of the company : La. D. 693.

**Registered Bonds.** A corporation which has issued registered or coupon bonds may, upon request of the holder thereof, change such registered bonds into coupon bonds, or such coupon bonds into registered bonds, either by substitution or proper indorsement thereon ; and all liens, securities, and rights which existed or accrued to such original bonds shall continue to the substituted bonds : O. 3265.

§ 8209. **Sinking Funds.** It may (with the consent of a majority as before : Wis.) establish a sinking fund for the payment of its debts, etc. : Io. 1081 ; Wis. 1748 ; W.Va. 52,4. For the purpose of making repairs, rebuilding, or enlarging or extending works, or to meet contingencies, or for the purpose of providing a sinking fund for the payment of debts, the corporation may establish a fund, and loan the same out, from time to time, taking in all cases good and sufficient security for the repayment of the same : Ky. 56,15 ; Ariz. 246.

§ 8210. **Agents.** It may employ agents : N.J. Corps. 1 ; Minn.\* 2667. (See § 8203.)

Any foreign corporation may by letters of attorney constitute an agent to act for it in the state : Ill. 32,66. For full provisions, see § 8403.

The acts of the agents of foreign corporations have the same effect as the acts of agents of foreign private persons : Me. 46,22. Unless prohibited by law : Me.

Corporations, domestic or foreign, may, by written power executed in the manner required for a conveyance by the corporation, appoint attorneys to convey their real estate ; and the seal of the corporation need not be affixed to such attorney's deed : Col. 1889, p. 97.

Corporations are bound by parol contracts made by an agent authorized by vote or by its by-laws. Contracts may be implied from corporate acts, or from the acts of a general agent : Me. 46,21.

They may establish branch offices or places of business in the state or elsewhere : Wis. 1748. Compare §§ 8040, 8050.

§ 8211. **Contracts.** Corporations organized under the general law are expressly given powers (see also § 8200), —

(A) To make all contracts necessary and proper to effect its purposes and conduct its authorized business<sup>a</sup>: N.H. 148,7; Wis.<sup>b</sup> 1748; Kan. 23,11; Tex. 575; Ala. 1664. Compare § 8200.

(B) "To contract and be contracted with:" Io. 1059; O. 3239; Va.<sup>b</sup> 1068; W.Va.<sup>c</sup> 52,1; Ky. 56,2; Ore. 3221; Uta. 2272; S.C. 1886,288,8; Miss.<sup>d</sup> 1031; Fla. 34,3; La. D. 684.

(C) To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation: Pa. Corps. 1; Kan. 23,11; Cal. 5354; Dak. Civ. C. 402; Ida. 2633; Oka. 974.

To do all needful acts to carry into effect the objects for which it was created: O. 3239; Md. 23,53.

(D) "To make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy:" Ky. 56,2; Ariz. 233.

Every contract of every corporation, by which a liability may be incurred by the company exceeding one hundred dollars, shall be in writing, and either under the common seal of the corporation or signed by some officer of the company authorized thereto: N.C. 683.

Parol contracts may be binding upon corporations (1) if made by an agent duly authorized by a corporate vote; (2) or if made under the general regulations of the corporation; and contracts may be implied on the part of corporations from their corporate acts, or those of an agent whose powers are of a general character: Mo. 2511.

All contracts or agreements for the sale, letting, leasing, consolidating, merging, or in any manner disposing of or transferring the franchises, privileges, or any part thereof, of any company or organization incorporated by or under the laws of this state, shall be acknowledged or proved as conveyances of land in this state are authorized to be acknowledged or proved, and shall be recorded in the office of the secretary of state within two months after the execution thereof, at the proper cost of the parties thereto; and unless such contract or agreement is lodged with the secretary of state for record within thirty days from the date of the execution thereof, the same shall be of no effect until recorded; and copies of the said record, duly certified by the secretary of state, shall be received in evidence in any court of this state, and be as good, effectual, and available in law as if the original contract or agreement was then and there produced; *provided, nevertheless*, that this act shall not be held or construed by any court, or by any officer or person whomsoever, as having rendered or as rendering invalid or of no effect any such contract or agreement as is in said act mentioned, as between the parties to such contract or agreement, nor in favor of or for the benefit of any person or corporation having notice of such contract or agreement, although such contract or agreement has not been or may not be lodged for record or recorded according to the directions of this act; but every such contract or agreement which has not been, and which may not hereafter be lodged for record and recorded pursuant to the directions of said act, shall, between the parties to such contract or agreement, and as to every person or corporation having notice thereof, have the same force and effect as if such contract or agreement had been lodged for record and recorded pursuant to the directions of said act, and such contracts or agreements may be lodged for record and recorded at any time, and from the time of lodging the same for record shall be considered as duly notified to all persons entitled to notice thereof: N.J. Corps. 100.

<sup>a</sup> "And no other:" N.H. <sup>b</sup> When no other provision is specially made by law. <sup>c</sup> "By simple contract or specialty." <sup>d</sup> "Within the limits of their corporate powers:" Miss.

§ 8212. **Other Powers** than as above specified do not vest in corporations (1) except when expressly given in the charter: N.Y. 1890,563,9; N.J. Corps. 3;

Wis. 1775; Io. 1058; Del. V. 17,147,2; W.Va. 52,21; Tenn. 1709; Cal. 5355; Dak. Civ. C. 402; Oka. 974.

Or by necessary implication: W.Va., Tenn.

"Except when conferred by law:" Md. 23,56.

(2) And except such as are necessary to the powers so enumerated: N.Y.; N.J.; Wis.; Md.; Del.; W.Va.; Cal.; Col. 240; Dak.; Mon. G. L. 483; Wy. 544; Ga. 1676; Oka.

Or "proper:" W.Va.

See also § 8211, note <sup>a</sup>, § 8200.

§ 8213. **Miscellaneous Powers.** Any corporation of this state now existing, or hereafter to be incorporated under the provisions of the act to which this is a supplement, having for its object the improvement and sale of and owning lands at or near any of the seaside resorts of this state, and not located on the line or at the terminus of any railroad in this state, may, by a vote of the majority of the capital stock of such corporation, subscribe to the capital stock of and become a shareholder in any railroad company about to construct its line of railroad so as to extend to, through, or over the lands owned by such corporation; *provided*, that such subscription shall not exceed one fifth of the amount of the capital stock of such subscribing corporation: N.J. Supp. Corps. 7.

In all cases where any corporation in this state authorized by its charter to act as trustees, executors, administrators, or guardian, shall be appointed executor, administrator, or trustee of any estate, or guardian of any infant, it shall and may be lawful for the president, cashier, or treasurer of such corporation to take and subscribe for such corporation any and all oaths or affirmations required to be taken or subscribed by such executor, administrator, trustee, or guardian: N.J. Supp. Corps. 12.

Any corporation formed for the purpose of navigating any stream or other water may, by virtue of such incorporation, construct any railway, macadamized road, plank-road, or clay road, or canal, or bridge, necessary and convenient for the purpose of transporting freight or passengers across any portage on the line of such navigation, occasioned by any rapids or other obstructions to the navigation of such stream or other water, in like manner and with like effect as if such corporation had been formed for such purpose: Ore. 3236.

Wood and metal manufacturing corporations have the privilege of dealing in articles so manufactured, or necessarily or properly connected therewith: Tenn. 1710.

§ 8214. **Extra-territorial Powers.** (See § 8010 *ad fin.*) It shall and may be lawful for any corporation created or existing under the laws of this state for the purpose, among others, of exercising its franchises or carrying on part of its business beyond the limits of this state, and in another state or territory of the United States or elsewhere, to accept any law of such other state or territory of the United States or foreign state and government, and to exercise within the territory of such other state or territory or foreign state and government all such authorities, powers, privileges, rights, and franchises as may be by such laws conferred, subject to such duties, liabilities, and restrictions as may by such laws be imposed: Col. 259.

Any corporation may transact business in any place within or without the United States: N.M. 1889,82.

§ 8215. **Ultra Vires.** No corporation shall engage in business other than that (1) expressly authorized by its charter: W.Va. 52,2; Mo. 2508.

(2) "Which is proper under its charter:" W.Va. 53,3.

(3) Not "outside the purpose of the charter:" Tenn. 1709.

(4) Not "in violation of any law:" W.Va. 52,2.

No corporation shall employ its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation : O. 3266 ; Kan. 23,26 ; Neb. 16,55 ; Va. 1070 ; W.Va. 52,2 ; Ark. 962 ; Tex. 589 ; S.C. 1886,288,22 ; Miss. 1032.

Corporations shall not become sureties nor guarantors for others, nor be capable of binding themselves as such : N.H. 148,7.

The property of any corporation organized under any special or general law shall be used only for the purposes prescribed by such law, or by its articles of organization in pursuance thereof : Wis. 1767.

A certificate of incorporation may contain any limitation upon the powers of the corporation, the directors, and the stockholders which may be desired by the parties signing the same ; provided such limitation does not attempt to exempt the corporation, the directors, or the stockholders from the performance of any duty imposed by this act or any law of this state : Del. V. 17,147,11. Compare § 8022.

No company organized under the provisions of this act for the purpose of doing a mining or manufacturing business shall have power to construct or operate any railroad, tramway, turnpike, or canal, except such as may lead from its principal works or place of business to some navigable stream, or to some existing railroad, turnpike, or other public highway : Ky. 56,20 ; Ariz. 250.

But power to construct *such* railway, etc. is expressly given : S.C. 1886,288,15.

No corporation under the general act has power to "buy and sell agricultural products or deal in merchandise : " Tenn. 1709.

Nothing herein [see § 8204] contained shall prohibit manufacturing or trading corporations from accommodating their customers by making payments or disbursements out of any sum of money received from customers : N.J. Corps. 1 ; Del.

**§ 8216. Holding its own Stock.** It shall not be lawful for such corporations to use any of their funds for the purchase of stock in their own company or corporation, except such as may be forfeited for the non-payment of assessments thereon, except as [hereinbefore] provided : Col. 246.

Unless otherwise provided, a corporation may purchase, hold, and transfer shares of its own stock from its surplus profits, or as provided in the article on assessments of stock, or by the unanimous consent in writing of all its stockholders, in such manner and for such price or consideration as the said stockholders may unanimously decide upon : Dak. Civ. C. 400 ; Oka. 972. See also § 8217, note <sup>b</sup>.

**§ 8217. Holding other Stock.** No corporation shall take or hold stock in any other <sup>b</sup> corporation : N.Y. 1890,564,40 ; Pa. Corps. 30 ; Wis. 1775 ; Va. <sup>a</sup> 1070 ; W.Va. <sup>a,b</sup> 52,3 ; Wy. <sup>b</sup> 510 ; D.C. 569.

"Except upon and with the assent of the holders of three fourths of the capital stock of both the corporation proposing to take such stock, and the corporation in which it is proposed to be taken : " Wis. 1891,283.

Except certain logging and lumber companies may hold stock in similar enterprises : Wis. 1775.

So any mining, quarrying, mechanical, or manufacturing company, may, with the assent of three fourths of its capital stock, subscribe for, purchase, and hold stock in any power or light company : Wis. 1775.

So, no corporation shall subscribe for or purchase bonds or securities of any other : W.Va. <sup>a,b</sup>

Or become surety or guarantor for any other : W.Va. <sup>a</sup>

The preceding section shall not prevent a company from receiving stock in satisfaction of any judgment, order, or decree (N.Y., Va., W.Va.), or as collateral security for

or in payment of any (prior: N.Y., Pa.) debt (Pa., Va., W.Va.), or from purchasing stocks at any sale made for its benefit: N.Y. ; Va. 1071 ; W.Va. 52,4. If the company so receive shares of its own stock, it may either extinguish the same or sell and transfer such shares to a purchaser. While a company holds such shares of its own stock, no vote shall be given thereon: Va. ; W.Va. 53,18.

So, it may manage, use, and dispose of what has been so taken as a natural person: W.Va.

But any domestic corporation, transacting business in this state and also in other states or foreign countries, may invest its funds in the stocks, bonds, or securities of other corporations owning lands in this state or such states, if dividends have been paid on such stocks continuously for three years immediately before such loans are made, or if the interest on such bonds or securities is not in default; and such stock, bonds, or securities shall be continuously of a market value twenty per cent greater than the amount loaned or continued thereon: N.Y. 1890,564,40.

It shall be lawful for any corporation of this state, or of any other state doing business in this state and authorized by law to own and hold shares of stock and bonds of corporations of other states, to own and hold and dispose thereof in the same manner and with all the rights, powers, and privileges of individual owners of shares of the capital stock and bonds or other evidences of indebtedness of corporations of this state: N.J. 1888,270.

Any corporation may take and acquire, by lease, purchase, sale, conveyance, or assignment, and thereafter own, hold, and enjoy, any right, privilege, or franchise heretofore or hereafter granted to or conferred upon any person or persons whomsoever by any law of this state, in all cases where such right, privilege, or franchise would be in direct aid of the business for which such corporation so acquiring or purchasing the same was organized: Wis. 1891,127.

If any company shall acquire stock in any other company contrary to the provisions of this section, it shall not be lawful for it to vote such stock in any general or special meeting of stockholders: Va. 1070.

Provided, however, such company may in its discretion purchase, hold, and own any stock, and to any amount, in any other company that is or may be subsidiary or tributary to, and that does contribute to the objects and purposes of, the first company in this proviso mentioned: Wy. 510.

NOTES. — <sup>a</sup> Unless specially provided by law. <sup>b</sup> "In any corporations" [including, it would seem, its own]: W. Va. So, "or in its own:" N.Y., Wy.

§ 8218. **Banking, etc.** No corporation created or to be created, and not expressly incorporated for banking purposes (which is not a "moneyed corporation," N.Y.: "created under the general act," Del.), shall by any implication or construction (1) be deemed to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold and silver, bullion, or foreign coins, of buying and selling bills of exchange: N.Y. 1890,563,14; N.J.<sup>a</sup> Corps. 4; Banks, 57; Del. V. 17,147,3; Tenn. 1709.

(2) Or of issuing bills, notes, or other evidences of debt, upon loan, or for circulation as money: N.Y.; N.J.<sup>a</sup>; Pa. Corps. 81; Del.; Md.; Tenn.; Cal. 5356; Nev. 816; Wash.<sup>b</sup> 2434; Ida. 2634; Mon. G.L. 485; Wy. 546.

(3) Be authorized to exercise banking privileges: Md. 23,2; S.C. 1578; 1886, 288,22.

It shall not be lawful for any corporation within this commonwealth, directly or indirectly, either by itself or through any agent or agents, individual or individuals, to make, issue, reissue, pay out, or circulate, or cause to be issued, reissued, put out, or circulated, any certificate, check, order, or due bill, or acknowledgment of indebtedness



of any description, for any purpose whatever, payable or redeemable in any goods, property, or effects, or payable or redeemable in anything except in gold and silver; and any violation of the provisions of this act shall be held and deemed to be a forfeiture of the charter : Pa. Corps. 81.

Provided further, that this section shall not be construed so as to prevent any corporation from drawing orders in the ordinary course of business, not intended for circulation, or in payment of interest, and that such orders shall not be negotiable : Pa. Corps. 81.

No corporation created by letters of agreement under this chapter for the purposes herein allowed shall, under any pretence, engage in the business of banking; provided that in the transaction of their business they may make, and take and indorse, when necessary, all such bonds, notes, and bills of exchange as the particular business may require : N.C. 684.

Any company incorporated under the laws of this state, having by its charter the right to receive moneys in trust or otherwise, shall be held to have, and shall have, the power, after the passage of this act, to receive deposits and loan the same and its capital on any kind of a commercial or business paper or real estate, buy and sell exchange, and all kinds of public or private securities and commercial paper : Tenn. 1887, 190, 1.

NOTES. — <sup>a</sup> Unless such powers are expressly given in its charter. <sup>b</sup> Except bonds by railroad companies, which shall at no time exceed double the amount of paid up stock.

## **Art. 822. Eminent Domain.** (See Arts. 874–876, and § 456, Vol. I.)

§ 8220. **General Principles.** It shall be lawful for the president and directors of any corporation organized under this act, or their properly authorized agents, to enter upon any lands or land, public or private, necessary to the business contemplated in its articles of association, or to take from any land most convenient to their works any timber, stone, earth, or other materials which may be necessary for the construction of, and the keeping in repair, its works and improvements : Fla. 34, 5.

Corporations which are authorized to acquire by condemnation any land may, if they cannot agree with the owners, apply to the circuit court, which appoints a sheriff jury of twenty, from which each side strikes off four; and such jury assesses the damages much as in the case of railroads : Md. 23, 248–254. (See Art. 874.)

When any corporation is permitted to take land by eminent domain, and it cannot agree with the owner for compensation, either it or the owner may petition the court of common pleas of the county, which appoints five disinterested freeholders of the county to appraise the damage, having due regard and making just allowance for the advantages resulting to the owner of the land in consequence of the improvements or operations of such corporation or the construction of the works; the report is confirmed by court and judgment entered : Pa. Corps. 49.

The corporation may tender a bond for damages; and either party may appeal to the jury of the court : Pa. Corps. 50 and 51.

When a corporation so takes land or materials for the route and site of its works, or for the construction and keeping in repair the same, and the parties cannot agree upon the damages, they apply to the circuit court for a writ of *ad quod damnum* directed to the sheriff to summon five disinterested persons who are voters to value the property; who shall take into consideration the damages sustained as well as benefits to be derived from said work, and make appraisal thereof; and the corporation shall pay said damages within sixty days after release by the land owner, and also all expenses : Fla. 34, 6.

Corporations formed to supply water for domestic, irrigating, or manufacturing purposes, for cities and towns with a population of three thousand or more, have the rights of condemning lands which are conferred on railroad companies under [§§ 8750–8759] : N.M. 231.

And in other states other companies than railroads are included in the railway statutes of eminent domain : Minn. 2467 ; W.Va. 42,1. (See § 8740.)

For convenience of treatment, all such statutes have been arranged in this work with those of railways. See Art. 874.

### **Art. 823. Liabilities of Officers.**

§ 8230. **Duties.** (See §§ 8042, 8061, 8081, 8160, etc.)

§ 8231. **Powers.** (See §§ 8048, 8050, 8060, 8063, 8073, 8090, 8112, 8162, etc.)

§ 8232. **Liabilities of Officers.** (See §§ 8028, 8123, 8161, 8208.) The officers and directors are liable for its debts as follows :

(1) When the corporate indebtedness exceeds the amount of the capital stock, the officers and directors assenting thereto are personally and individually liable for such excess to the creditors of the corporation : N.Y. 1890,564,24 ; Ill. 32,16 ; Mon. G. L. 470. See also § 8207.

(2) If any person or persons, being or pretending to be an officer or agent of the board of directors of any stock corporation or pretended stock corporation, shall assume or exercise corporate powers, or use the name of such corporation, without complying with the provisions of Arts. 800-802 before all stock named in the articles of incorporation is subscribed in good faith, they shall be jointly and severally liable for all debts so contracted by them in the name of such corporation : Ill. 32,18. See § 8110. Compare §§ 8030, 8031.

(3) If the directors or officers of any corporation declare or pay a dividend when it is insolvent, or the payment of such dividend would render it insolvent or diminish the amount of its capital stock, all directors, etc. assenting thereto shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall thereafter be contracted while they remain in office : Ill. 32,19.

"To the extent of such dividend" only : Mo. 741. For other states, see § 8161.

If any corporation organized and established under the authority of this act, shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action founded on this statute, for all debts contracted after such violation as aforesaid : Ark. 984.

Any contract or contracts, verbal or written, hereafter made, whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint stock association from any liability imposed by section three of article twelve of the constitution of California [Vol. I. § 451], are hereby declared to be and shall be null and void : Cal. 5327.

The trustees of a corporation created for a purpose other than profit shall be personally liable for all debts of the corporation by them contracted : O. 3261.

It shall be unlawful for any officer or agent of any bank or other corporation to use or borrow for himself, directly or indirectly, any money or other property belonging to any bank or other corporation of which he is an officer or agent, without the permission of a majority of the board of directors, or of a committee of the board authorized to act, and said agent or officer so offending, or any other officer or agent of the same corporation loaning money or property of the said corporation to another agent or officer thereof without the permission of a majority of the board of directors, or of a committee authorized to act, shall be held guilty of a misdemeanor : Ga. 1887,147.

§ 8233. **Mode of Suit.** When any of the officers or directors of any company, or stockholders thereof, shall be liable, by the provisions of this act, to pay the debts of such company, or any part thereof, any person to whom they shall be so liable may have

an action on the case against any one or more of the said officers, directors, or stockholders; and the declaration in such action shall state the claim against the company, and the ground on which the plaintiff expects to charge the defendants personally: R.I.\* 155,21; N.J. Corp. 93; Del. V. 17,147,41.

Such action may be brought pending an action against the company on the same claim: R.I.\*

When any of the said officers, directors, or stockholders are liable, as mentioned in this act, for the debts of any such company, or any part thereof, the person to whom they are so liable may, instead of the other proceedings mentioned in this act, have his remedy against the said officers, directors, or stockholders by a bill in chancery: N.J. Corp. 94.

No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment shall have been obtained therefor against such corporation, and execution thereon returned unsatisfied, but any suit brought against any such director or stockholder for such debt shall stay after execution levied or other proceedings to acquire a lien until such return shall have been made: N.J. Corp. 96.

When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members respecting the business of the corporation, and also when any of the said officers or members shall be liable to contribute for money paid by any other or others of them, on account of any such debts or acts, the money may be recovered by a bill in chancery; and the said court may make all such orders and decrees therein as may be necessary to do justice between the parties: Mich. 4878.

**§ 8234. Intentional Fraud.** (1) In failing to comply substantially with the articles of incorporation (§ 8022): Io., Minn., Ky., Tenn., Ariz.

(2) Or in deceiving the public or individuals in relation to their means or liabilities: Minn., Io., Neb., Tenn., S.C.

(3) For violating any of the provisions of this chapter in conducting the business of the corporation (Minn.)—renders those guilty to fine or imprisonment: Io. 1071; Minn. 2465; Neb. 16,140; Ky. 56,9; S.C. 1363; 1886,288,22; Ariz. 240.

So, when a stockholder personally violates any of the provisions of this title in the transaction of any business of the corporation as officer, director, or member thereof, or is guilty of any fraud, unfaithfulness, or dishonesty in the discharge of any official duty: Minn. 2455.

And is a misdemeanor: Tenn. 1716; S.C.; Ariz.

And any person who has sustained injury thereby may also have an action for damages: Io., Ky., Tenn., Ariz.

For double damages: Neb.

So, it renders the guilty members personally liable therefor: N.C. 686.

If the chief or other authorized officer of any company shall issue any certificate of stock in any other way or to any other person than as provided by the by-laws of said company, the officer issuing such certificate shall be guilty of a misdemeanor: N.C. 664.

The false issuing of stock, bonds, etc. by any person, or aiding or procuring therein, is generally made a felony (and see Vol. III., Part V.): Mo. 3571-2; Ark. 1735.

If such directors shall, by any official act or conduct, fraudulently induce any person to give credit to such corporation, they shall be liable in like manner to such person for any loss he may sustain thereby: Ore. 3231.

If an action is brought against a corporation by the procurement of its directors, or any of them, to enforce any claim or obligation declared void by law, or to which the

corporation has a valid defence, and such action is in the interest or for the benefit of any director, and the corporation has by their connivance made default in such action, or consented to the validity of such claim or obligation, any stockholder or member of the corporation may apply to the supreme court, upon affidavit setting forth the facts, for a stay : N.Y. 1890,563,16.

§ 8235. **False Accounts.** The intentional keeping of false books of account, whereby any one is injured, is in many states a misdemeanor on the part of those concerned therein (or of any one whose duty it is to see that the books and accounts were correctly kept : Io.) : N.J. Crimes, 155 ; Pa. Crimes, 197 ; Io. 1075 ; Ky. 56,10 ; Tenn. 1717 ; Wash. 2437 ; S.C. 1886,288,17 ; Ariz. 241. See in Part V.

So the making false reports : Tenn.

And the officers knowingly participating are liable for damages to the person injured : Tenn.

So the making, circulating, publishing, or concurring in making, etc. statements known to them to be false in a material particular (see below) is a criminal offence : N.J. Crimes, 157 ; Cal. 1877-8,695.

If any certified report or statement made or public notice given by the officers be false in any material representation, all the officers who have signed the same (knowing it to be false : Ill., Col., D.C. ; or without due inquiry : N.H.), (1) are jointly and severally liable for damages arising therefrom : Ill. 32,21 ; Col. 255 ; D.C.

(2) Are individually liable for all debts of the corporation contracted while they were in office : N.H. 150,19 ; N.Y. 1890,564,31 ; N.J. Corps. 56 ; Mon. G. L. 463 ; Del. V. 17,147,31 ; D.C. 568.

Or while they were stockholders : N.J., Mon., D.C., Del.

(3) If the officers or directors intentionally neglect or refuse to comply with the provisions of this chapter, and to perform the duties by law required of them, they are jointly and severally liable for all debts of the corporation contracted during such neglect, etc. : Ct. 1959 ; Ark. 983 ; N.M. 219.

(4) So, if the corporation become insolvent by reason of any violation of law, the directors assenting thereto are liable as in § 8234 : Minn. 2465.

If any officer of a corporation, charged by law with the duty of making and causing to be published any statement in regard to such corporation, neglects so to do, such officer, in addition to penalties already provided, forfeits five hundred dollars to the prosecutor, to be recovered by action of debt, or action on the case : Me. 46,35.

Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby ; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable : Cal. 5316 ; Dak. Civ. C. 409 ; Ida. 2603 ; Oka. 984.

Issuing false or fraudulent stock is a misdemeanor on the part of any one signing the same : N.J. Crimes, 189.

If the secretary, clerk, or other person having the charge of keeping the books of the corporation, or any other person whose duty it is to make entries in such books, shall wilfully omit to make the proper entries, or shall knowingly and wilfully make any false and fictitious entries therein, with intent to deceive or defraud the corporation or any stockholder, creditor, or other person, he and his counsellors, advisers, aiders, and abettors shall be deemed guilty (1) of forgery, and shall be punished as provided by law for the punishment of the crime of forgery : Uta. 2281.

(2) Of a misdemeanor : N.J. Crimes, 156. See also § 8042.

§ 8236. **The Diversion of Funds** (in Nebraska the "division") of the corporation to other objects than those mentioned in their articles [and in the notice published under § 8080: Io., Minn. 2465], if any person be thereby injured, is declared to be such a fraud as will subject those concerned to the penalties provided in the previous sections: Io. 1072; Minn. 2465; Neb. 1,16,141; Tenn. 1717.

"A diversion of the funds of a corporation for other purposes than those mentioned in the act granting the charter and the payment of dividends, which leave insufficient funds to meet the liabilities of the corporation, shall be deemed (1) a violation of the provisions of this subdivision, and subject those engaged to the penalties here prescribed" (§ 8234): Minn.; Neb. 1,16,141; Tenn. 1717; (2) it is a criminal offence: Fla. 34,37.

So the declaring of dividends when the profits are insufficient to pay the same: Minn. See § 8161.

If any officer, director, employee, or other person having the charge or management of any money or other property of the corporation, or to whom any such money or other property shall be intrusted for any purpose whatever, shall fraudulently misapply, carry away, secrete, conceal, or convert to his own use any such money or other property with intent to defraud such corporation, or any stockholder, creditor, or other person, he, his counsellors, aiders, and abettors, shall be deemed guilty of embezzlement, and shall be punished as provided by law for the punishment of embezzlement: Uta. 2282.

§ 8237. **Debts paid by Officers.** If an officer (or stockholder: N.J.) pay a debt of the corporation (for which he is made liable by law: N.J.), he may recover it from the company: R.I.\* 155,24; N.H. 150,22; N.J. Corps. 95; Del. V. 17,147,42.

But has no action against the individual stockholders: R.I.,\* N.H., N.J., Del.

The process is (1) by bill in equity: N.H.

(2) By actions against the corporation for money paid for its use: N.J., Del.

§ 8238. **Liability of the Corporation.** The participation of the board of directors, as a board, in such acts, is also a forfeiture of the charter of incorporation, whether done by actual official proceedings, or tacitly acquiesced in with knowledge on the part of a majority of the members: Tenn. 1718.

Every corporation acts through its officers, and is responsible for the acts of such officers in the sphere of their appropriate duties; and no corporation shall be relieved of its liability to third persons for the acts of its officers by reason of any by-law or other limitation upon the power of the officer, not known to such third person: Ga. 1680.

## **Art. 824. Of the Employees and their Rights.**

§ 8240. **Stockholders' Liability.** The stockholders of any company organized under the provisions of this chapter shall jointly, severally, and individually be liable for all debts that may be due and owing to all their laborers, servants, and apprentices, for services performed for such corporation: N.Y. 1890,564,57; D.C. 574. See §§ 8140, 8146.

§ 8241. **Priority of Labor.** All corporations are required to make payment to their employees or operatives of the wages due for all labor and services performed by them within three months next preceding a demand made therefor, not exceeding sixty dollars, in preference to any other claim or demand not secured by specific liens on property; and such priority of payment may be enforced by civil action: Mo. 2538.

So such claims have a prior lien on all corporate property (except as to claims specifically secured: Mo.): Tenn. 2768-9; Mo.

Provision is in many states made for weekly, fortnightly, or monthly payment : Cal. 1891,146 ; Ind. 1891, 83. And see in Vol. III.

Provision is made for the weekly payment of wages by all corporations : Mass. 1886,87 ; 1887,399 ; 1891,239 ; R.I. 1891,918 ; Ill. 1891, p. 213. See in Vol. III., "Labor."

Payment of wages must be made on or before the 15th of every month for the full amount of all wages earned previous to the 1st thereof, with interest at six per cent. ; if not paid, to be added to said wages when paid or recovered by suit : Mo.

And thirty days' notice given of any reduction : Mo. 2539.

All such debts due for labor have priority of payment from the money and assets of corporations in the hands of officers or agents, or of any receiver or assignee, over every other claim (1) not specifically secured : N.Y. 1885,376 ; Mo.

(2) Except a recorded mortgage : Cal. ib. 2 ; Ore. 1891, p. 81.

Every officer, receiver, or other person holding assets, refusing to recognize the priority of employees' claims, is liable to such employees for the damage : Mo.

Mortgages of incorporate companies upon their property or earnings, whether in bonds or otherwise, hereafter issued, shall not have power to exempt the property or earnings of such incorporations from execution for the satisfaction of any judgment obtained in courts of the state against such incorporation for labor performed, nor for material furnished such incorporation, nor for torts committed by such incorporation, its agent or employees, whereby any person is killed or any person or property injured, any clause or clauses in such mortgage to the contrary notwithstanding : N.C. 1255.

§ 8242. **Company Stores. Scrip, etc.** All persons and corporations are required to pay in actual money : Ill. 1891, p. 212 ; Ind. 1891,83.

And forbidden to maintain "company stores," etc. : Pa. 1891,214 ; Ill. 1891, p. 212.

So they may not sell to employees at a higher price than to others : Ind.

Mining and manufacturing corporations, or the officers and stockholders, are forbidden to carry on company stores where goods and merchandise other than such as have been mined and manufactured by the company are offered for sale ; nor shall they lease the right to maintain such stores, or make any contract with the owners of any store requiring the employees to trade thereat, under penalty of forfeiture of the charter : Pa. 1891,214.

## **Art. 825 Public Rights.**

§ 8250. **Annual Report.** A list of all companies so incorporated shall be reported by the secretary of the commonwealth to the general assembly at each regular session : Va. 1150 ; W.Va. 54,17.

To be printed and bound with the annual laws : W.Va. See also § 8082.

§ 8251. **Examination of Books, etc.** Every corporation subject to this chapter shall exhibit its books, papers, and property to such agents or committees as the legislature may from time to time appoint to examine the same ; and when required by the legislature, shall report thereto a full, fair, and detailed exhibit of its property, liabilities, and condition, verified by the oath of the president, and of the secretary or principal bookkeeper : W.Va. 53,60.

The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times ; and for that purpose any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof ; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs

and condition, and compel the production of all keys, books, papers, and documents, by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe: Minn. 3144; Cal. 5383; Dak. Civ. C. 448; Oka. 1025.

It shall be the duty of the attorney-general, whenever required by the governor, to examine into the affairs of any corporation, and make written report of such examination to the governor, who shall lay the same before the legislature; and for that purpose the attorney-general is given all necessary powers of examination of persons and documents: Mich. 4884; Cal. 5382.

The attorney-general, when required by the governor, must examine into the affairs of any corporation, and has power to examine persons and documents, and the legislature has power, or any committee thereof, to make such examination at any time: Wis. 1766; Mich. 4884; Minn. 3144.

§ 8252. **Combinations and Trusts.** (See Art. 990.) No stock corporation shall combine with any other corporation for the prevention of competition: N.Y. 1890, 564, 7.

§ 8253. **Commissioner.** There is in Massachusetts a commissioner of corporations: Mass. 106, 1.

His duties are generally to see that corporations comply with the statutes, and report neglects and omissions to the attorney-general: Mass.

He examines and approves by indorsement *all* certificates required to be filed: Mass. 106, 59.

## **Art. 826. Taxation.**

§ 8260. **General System.**<sup>a</sup> (See Vol. I., §§ 331, 441, 491.) We find practically four systems of taxation of general corporations prevailing throughout the United States: the first, where the corporation itself is taxed on its real and personal property, and must list it for taxation like any individual. In this class we may roughly put the following states: N.H., Ct., O., Ind., Ill., Mich., Wis., Io., Minn., Va., N.C., Ky., Tenn., Mo., Ark., Tex., Cal., Ore., Nev., Col., Wash., S.D., Ida., Mon., Uta., S.C., N.M., Ariz., Oka.

In some of these states the stockholder is also liable to be taxed locally upon his shares of stock: O. 2737; Ill.; Io.; Va.; Tenn.; Ark.; Wash.; Oka.

But in others where the corporation pays such tax the stockholder is exempted: Ct., Ind., Mich., Wis., Minn., N.C., Ky., Mo., Tex., Cal., Ore., Nev., S.D., Ida., Mon., Uta., S.C., N.M.

And so, apparently, where the laws are silent: Col.

The second system is where a corporation pays a tax on its stock with or without deduction for its real estate or other property otherwise taxable, and the stockholder, as a rule, pays no tax. In this class we have roughly put the following states: Mass., Me., Vt., R.I., N.J., Kan., Neb., W.Va., N.D., Ala., Miss., Fla., La.

And the individual stockholder is then exempted as before: Mass., Kan., Neb., Ala., Fla. But in others, not: Me., N.J., Pa., N.D.

But the corporation also pays property taxes (1) on realty: Mass., Vt., R.I., Kan., Neb.

(2) On personalty: Kan., Neb.

Third, where a corporation pays a tax on its property, and also a stock tax or franchise tax, which latter is commonly determined in some specified way, as by reference to the amount of dividends paid, etc.: N.Y., Wy.

And the fourth system, where there are all three; i. e. the local taxation of real estate, a franchise or stock tax (i. e. an excise tax not commonly determined with any reference to the corporate property), and a tax on stock to the stockholder: Pa., Md., Ga.

In Delaware the taxation of corporations is determined entirely by special acts applying to the particular classes, and there is no general law.

For foreign corporations, see § 8268 and § 8409.

In most states foreign corporations pay tax on their property within the state, and individuals pay tax on their shares in foreign corporations, although some few states, notably Delaware, have declared this to be double taxation; but in many states a fee, license tax, or excise is imposed upon foreign corporations doing business within the state. This is particularly the case with reference to insurance companies, express companies, sleeping car and other transportation companies, etc.

**Property Tax.** Corporations in general<sup>b</sup> are subject to taxation of their real and personal property, and must list it like individuals: N.H. 55,9; R.I. 43,12; Ct. 3832-4; N.Y. 1,13,2,6; 1,13,1,1; N.J. Corps. 105; O. 2744; Ind. 6357; Ill. 120,32; Mich. 1891,200,4; Wis. 1041; Io. 801. Minn. 1382; Kan. 107,12; Neb. 77,32; Md. 81,2; Va. 456,487; N.C. 1889,218,14, 1891,323,6; Ky. p. 335, § 2, p. 1047; Tenn. 1889,96,4; Mo. 7538; 1891, p. 195; Ark. 5645; Tex. 4688; Cal. 3627; Ore. 2744; Nev. 1082; Col. 1891, p. 294; Wash. 2840; 1890,18,1; 1891,190,20; Dak. 28,15 & 19; N.D. 1890,132,2 & 7, S.D. 1891,14,7; Ida. 1442; Mon. 1891, p. 82, § 23; Wy. 3778; Uta. 2014,2017; S.C. 196; Ga. 799; Ala. 450,473,478; Miss. 468,474; Fla. 174,9; La. D. 3254; N.M. 2815; Ariz. 2649; Oka. 6218.

So of their real property only: Mass. 13,38; Me. 6,14; Vt. 288; R.I.; N.Y. 1,13,4,1; N.J. Corps. 81; Pa. Taxes, 88; W.Va. 29,64.

In the place of its principal office, or, if none, at any place where it does business: Ind. 6291; Mich.; Wis.; Va. 492; W.Va.; Tenn.; Ore. See also § 8263.

But real estate is assessed where situated: Mass., Me., Vt., R.I., Ct., N.J., O., Md., W.Va., Tenn., Ala. And so, doubtless, in all states.

So of all property: O., Kan., Wash., Mon., La.

And so of machinery: Mass.; Me.; Vt. 281; R.I.

And personalty in the place of its office: Ct., W.Va. See above.

And the valuation of such property is deducted from the whole value of the stock, and the remaining value only taxed: Mass. 13,39; Me.; Vt.; R.I.; N.Y.; N.J.; Kan.; W.Va.; Neb.; N.D.; Ala. 453.

"Real estate owned by any corporation not required for the transaction of its appropriate business shall be taxable as provided in the preceding section, unless specially exempted by law." Ct. 3833.

All real and personal estate of every manufacturing company or corporation shall be taxed the same as the real and personal estate of an individual: N.J. Supp. Corps. 59.

All the real and personal estate of every corporation incorporated by any act of the legislature, or by the filing of a certificate or otherwise under any general law of this state, shall be taxed the same as the real and personal estate of an individual; *provided, however,* that the provisions of this section shall not apply to railway, turnpike, insurance, canal, or banking corporations, or to savings banks, or to cemeteries, church property, or purely charitable or educational associations: N.J. Supp. Corps. 93.



A state tax of three mills per dollar is imposed upon the property of all foreign or domestic corporations, or joint stock companies, or limited partnerships, as follows:—

Upon all mortgages, all moneys owing by solvent debtors, all articles of agreement and accounts bearing interest, all public loans except those of the state or the United States, and all loans issued, or shares of stock [except those taxed under § 21] in any bank, corporation, company, or limited partnership, domestic or foreign, all moneys loaned or invested in other states or foreign companies, and on all money capital in the hands of individuals of the state: Pa. 1889,332,1.

All personal property, stocks, bonds, etc., held by a corporation is taxable as if held by any individual for state purposes: Pa. 1891,200,1.

The president, secretary, and principal accounting officer of every canal or slack-water navigation company, turnpike company, plank-road company, bridge company, insurance company, telegraph company, or other joint stock company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by any law of this state or not, shall list for taxation, verified by the oath of the person so listing, all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys, and credits of such company or corporation within the state, at the actual value in money, in manner following. In all cases returns shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, village, city, or ward therein. The value of all movable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, villages, or townships, *pro rata*, in proportion to the value of the real estate and fixed property in said ward, city, village, or township, and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, village, or township. It shall be the duty of the accounting officer aforesaid to make return to the auditor of state during the month of May of each year of the aggregate amount of all property by him returned to the several auditors of the respective counties in which the same may be located. It shall be the duty of the auditor of each county, on or before the first Monday of May, annually, to furnish the aforesaid president, secretary, principal accounting officer, or agent the necessary blanks for the purpose of making aforesaid returns; but no neglect or failure on the part of the county auditor to furnish such blanks shall excuse any such president, secretary, principal accountant, or agent from making the returns within the time specified herein. If the county auditor to whom returns are made is of the opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county auditor, he is hereby required to proceed to have the same valued and assessed: provided, that nothing in this section shall be so construed as to tax any stock or interest in any joint stock company held by the state: O. 2744.

All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this state is situated shall be deemed its residence; but if there be no principal office in the state, then such property shall be listed and taxed at any place in the state where the corporation transacts business: Ind. 1891,99,12.

"He shall ascertain from the proper officers or agents of all incorporated companies in this district (except railroads, and foreign insurance, telegraph, and express companies) the actual value of the capital employed or invested by them in their trade or business (exclusive of real estate and property exempt by law from taxation), and enter the same in his personal property book. The real estate of such companies shall be

assessed, and entered in the land book as in other cases. The value of the capital shall be estimated by taking the aggregate value of the personal property of the company, not exempt from taxation, wherever situated, including their money, credits, and investments, whether in or out of the state, and deducting from the said money, credits, and investments, and not from said aggregate, what they owe to others as principal debtors. If the company have branches, each branch shall be assessed separately in the district where the principal office for transacting its financial concerns is located, or if there be no such office, then in the district where its operations are carried on. When the capital of the company is assessed as aforesaid, the personal property thereof, which shall not be held to include the locks or dams of a navigation company, shall not be otherwise assessed, nor shall any individual shareholder or partner therein be required to list or be assessed with his share, portion, or interest in the said capital : " W.Va. 29,61.

Bridge, express, ferry, gas, manufacturing, mining, savings bank, stage, steamboat, street railroad, transportation, and all other companies and associations incorporated under the laws of this state, except insurance companies, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly : first, the name and location of the company or association ; second, the amount of capital stock authorized, and the number of shares into which such capital stock is divided ; third, the amount of capital stock paid up ; fourth, the market value, or if no market value, then the actual value of the shares of stock ; fifth, the assessed valuation of all its real and personal property (which real and personal property shall be listed and valued as other real and personal property is listed and assessed under this chapter). The aggregate amount of the fifth item shall be deducted from the aggregate value of its shares of stock, as provided by the fourth item, and the remainder, if any, shall be listed by the list-taker in the name of such company or corporation as capital stock thereof : N.C. 1889,218,43.

All joint stock companies engaged in the manufacture of any goods, wares, merchandise, or other articles of value, shall pay an *ad valorem* tax upon the value of the property, real, personal, and mixed, which is used and held for the purpose of manufacturing, preparing, and completing the goods, wares, merchandise, and articles in the manufacture of which the parties aforesaid shall be engaged : Tenn. 1889,96,13.

**Double Taxation.** Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares and also of the corporate property would be double taxation. Therefore all property belonging to corporations shall be assessed and taxed ; but no assessment shall be made of shares of stock, nor shall any holder thereof be taxed therefor : Cal. 3608 ; Ariz. 2633.

" No statute provisions shall be so construed as to subject any stock to double taxation : " N.H. 55,10.

" *Provided*, that no shareholder shall be liable to taxation for shares held in any corporation within this state which in its corporate capacity is taxed within this state for an amount equal to the value of its property, or in any corporation without this state which is, or the shares in which are, liable to taxation in the state where such corporation is located : " R.I. 42,10.

" All sums paid to the treasurer under the provisions of the four preceding sections shall be in lieu of all other tax upon the franchise of such corporation, but it shall not be in lieu of any taxes imposed by law upon the property of such corporation, or upon the shares of stock held by individual stockholders residing in this state. In assessing the valuation of a franchise under the provisions of sections 1913 and 1914, the State board of equalization shall consider, as one of the elements determining the value of the franchise, the amount of the capital stock of such corporation, unless upon proper

investigation such board shall find that a part of such capital stock has been issued in payment for patent rights owned by such corporation, or unless such corporation is organized for the purpose of doing a fire or life insurance business; provided that nothing contained in this and the four preceding sections shall apply to life insurance corporations doing business in whole or in part upon a mutual plan." Ct. 1916.

But franchises belonging to corporations or otherwise may be taxed, if granted by the authorities of the county or city, in such county or city; if granted by any other authority, in the county in which the corporation or person has its principal place of business: Cal. 3628.

NOTE. — "There is no subject upon which greater confusion exists in the statutes of most of the states than in that of the taxation of corporations. Under many of the general revisions it is almost impossible to determine the prevailing law without making a special legal opinion for each point. Aside from the fact that in many states many classes of corporations are provided for by special statute in this particular, it is in many cases impossible to tell, from the general statutes themselves, what system they have really established, without inquiring as to the practice that exists under which the law is construed. For instance, many states provide that the corporation or stockholder, or both, shall pay a tax on the shares themselves; but suppose in such cases there is a general provision that all personal property shall be taxed, with or without a definition including stock of corporations under the term "personal property." In such cases are we to infer that the tax on the capital stock, when it is imposed on the corporation itself, is provided instead of such taxation directly to the shareholder? and again, when there is a general property tax on all property in the state, and no exception made of property of corporations, we are naturally to infer that the corporation pays a property tax; but in such cases are we to suppose that the stockholder also pays a tax on his stock? Again, there is often a provision that corporations shall pay a tax on all their property at the place of their general office; and although no exception in terms is made of real estate, we are probably, nevertheless, to infer that such real estate is not taxed at such place, but only in the town or county where it lies. Again, several states have provisions, in general terms, against the double taxation of corporate stock and property, but nothing appears in the statutes to show how this general prohibition is construed. There is no general rule that can safely be applied in all these particulars. By inference and comparison from the whole context of provisions bearing on taxation, it will appear that in some states where the corporation pays a property tax the shareholder is exempt from taxation on his stock, and in other states not. The author cannot hope, therefore, that his digesting of the following article is in all cases either accurate or exhaustive, and in this, as in other cases, he will be greatly indebted for the correction of obvious errors communicated to him by members of the bar in other states.

The reader will remember that the provisions of this article apply only to corporations in general. For the taxation of particular classes, railroads, etc., see the other Titles of this Part. In many of the older states, also, the older corporations have in their charters special provisions concerning their taxation, which can commonly not be repealed unless the corporation seeks reorganization under the general law. See §§ 8002, 8004.

b "The taxation of which is not otherwise provided for:" Mo.

**§ 8261. Taxation of Shares to the Owner.** In most states the owners of stock in corporations taxed under § 8260 or § 8262 are exempt from taxation on such stock: N.H. 55,7 & 10; Mass. 13,57; R.I. 42,10; 1891,99; Ct. 3834; N.Y. 1,13,1,7; Ind. 6308; Mich. 1891,200,2; Wis. 1038; Io.\* R. S. 1295; Minn. 1439; Kan. 107,12; W.Va. 29,64; Ky. p. 1047; Tex. 4675; Cal. 3608; Ore. 2750; Nev. 1086; S.D. 1891,14,7; Ida. 1401,1440; Mon. 1889, p. 222, § 4; 1891, p. 74, § 4; Wy. 1891,38; Uta. 2009; S.C. 169, (19th); 194; Ala. 451,478; N.M. 2815.

So in corporations "which are taxed on their capital," (provided they make the return): Fla. 1891,4010,8.

"Shares are taxed at their cash value (except as above):" N.M. 28,18.

All shares in moneyed and other corporations within or without the state, except as otherwise provided by law [are taxable to the owner locally]: Me. 6,5; 46,31; Vt. 283; R.I. 42,10; Ct. 3828; N.J. Taxes, 63; O. 2737,2739; Ill. 120,1; Io. 813; Minn. 1384 (bank shares only); Md. 81,2; Va.; Tenn. 1889,96,7; Ark. 5586; Wash. 1891,190,16; N.D. 1890,132,4; Ga. 799; Oka. 6130.

Stock of non-residents is taxable at the place where the corporation is established : Me. 46,32 ; Vt.

The capital stock of any company incorporated under this charter shall be liable to taxation : Tenn. 1698.

Shares in corporations outside the state are generally subject to taxation to the owner within it ; and see Art. 840 ; N.H. 55,7 ; Wis. 1036 ; Mich. 1890,200,2 ; Minn. 1384 ; Neb. 1,77,1 ; Md. 80,2 ; Tex. 4671 ; S.D. 1891,14,7 & 16 ; Mon. 1891, p. 74, § 4. Compare § 8409.

Shares of stock in corporations generally (Vt. Pa.), railroads (Pa), (except railroads, Vt.), manufacturing corporations banks (Vt., Pa.), trust companies (Vt.), steamboat (Vt.) and transportation companies (Vt.), shall be taxed to the owner in the town where he resides : Vt. 283 ; Pa. Taxes, 174 ; but if he resides out of the state, to the corporation in the town where it has its principal place of business : Vt.

So, the tax is deducted from dividends, or, if none, collected by the treasurer of the company : Pa. Taxes, 181.

Stock of any bank or other corporation, except a manufacturing corporation, held by persons out of the state, or unknown, shall be assessed in the town where such bank or other corporation is located or transacts its ordinary business. No assignment, sale, transfer, or attachment passes any property in such stock unless the vendee first pays such tax and cost : Me. 1891,129,30.

Taxes assessed on such stock of non-residents shall be paid by the corporation, and it shall hold such stock as security for such payment, and may deduct the amount from any dividends : Vt. 284.

Shares of stock in any corporation are taxable to the owner except such as are liable to the capital stock tax hereinafter provided for [see § 8262] : Pa. 1891,200,1.

The income derived from all shares of stock in any corporations which are, by their charters, exempted from *ad valorem* tax, or from bonds exempt from any such tax, shall pay a tax of five per cent per annum : Tenn. 1889,130,7.

All shares in banks organized in this state under any law of this state, or of the United States [are taxed to the owner], at their full market value, after deducting the value of the real estate as taxed in the banks ; all shares in foreign corporations other than banks, at their value ; all shares in other corporations organized under the laws of this state, when the property of such corporation is not exempt by some law, or is not taxable to the corporation itself, and the cash value of such shares : Ind. 1891,99, 50 ; Mich. 1891,200,13.

**§ 8262. Franchise Tax to the Corporation.** Subject to the above restrictions, corporations pay a franchise tax on the whole market value of their shares to the state, at a rate determined by the average rate of all cities and towns in the state for all purposes, state and municipal ; and such tax is apportioned by the state among the towns where the stockholders reside : Mass. 13,39-40.

The capital stock (not invested in real estate : La.) and franchises of corporations, except as may be otherwise provided, shall be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located : Ind. 6291 ; Kan. ; Mon. 1889, p. 221 ; Ala. ; Miss. 473 ; La. D. 3255 ; Fla. 1891,4010.

At its market value : Miss. See § 8263.

If no principal office, in any place where it transacts business : Ind.

Franchises are listed as personality : Ind. 6303.

All corporations, whether manufacturing corporations or otherwise, organized or acting under the provisions of this act, or the act to which this is a supplement, shall hereafter be taxed upon their capital stock at its actual value and accumulated surplus : N.J. Supp. Corps. 57 ; Taxes, 74 ; Kan. 107,12.

But may deduct therefrom the value of real estate locally taxed : Kan.

So, they may deduct personal estate in the state : Kan.

Persons owning shares in incorporated companies taxable by law are not required to deliver to the list-taker a list thereof, but the president or other chief officer of such corporation shall deliver to the list-taker a list of all shares of stock held therein, and the value thereof, except banks. The tax assessed on shares of stock embraced in said list shall be paid by the corporations respectively : N.C. 1889,218,16.

The paid in capital stock of all incorporated companies or associations doing business in this state, together with the accumulated surplus, not including real estate situated in any other state than this, shall be assessed to the company or association issuing the same : Wy. 1891,38,1.

And every corporation organized under the laws of this state, of any other state of the United States, or of any foreign state (except banks), engaged in any such manufacturing business, or in any other business, shall pay an *ad valorem* tax upon the full value of its capital stock (including its franchises, easements, and incorporeal rights and corporate property as a part of such capital stock), which shall in no case be held or deemed to be less than the actual value of all its shares of stock, together with the actual value of its bonded indebtedness ; and the value of the shares shall be looked to in arriving at the value of its said capital stock : Tenn. 1889,96,13.

No assessment shall hereafter be made under that name as the capital stock of any national bank, state bank, banking company, banking firm or banking association, or of any corporation, company, firm, or association whose capital stock is represented by shares, but the actual shares shall be assessed to the shareholders who appear as such upon the books, regardless of any transfer not registered or entered upon the books, and it shall be the duty of the president or other officer to furnish to the assessor a complete list of those who are borne upon the books as shareholders ; and all taxes so assessed shall be paid by the bank, company, firm, association, or corporation, which shall be entitled to collect the amounts from the shareholders or their transferees ; all property owned by the bank, company, firm, association, or corporation, which is taxable under section 1 of this act, shall be assessed directly to the bank, company, firm, association, or corporation, and the *pro rata* of such direct property taxes, and of all exempt property, proportioned to each share of capital stock, shall be deducted from the amount of taxes assessed to that share under this section. Such assessment shall be made where the bank, etc. is located, and not elsewhere, whether the shareholders reside there or not : La. 1888,85,127.

And a further tax upon all corporations incorporated or doing business in the state (except savings banks, life insurance companies, banks, foreign insurance companies, manufacturing and mining companies doing business in the state, but this exception does not include gas or trust companies) of a quarter of a mill on the capital stock for each one per cent of dividends declared if these latter amount to six per cent or more ; if not amounting to six per cent, then one and a half mills upon each dollar of valuation of the capital stock : N.Y. 1881,361,3; 1890,522.

Such capital stock taxed is only the amount "employed within the state:" N.Y. ib. 11 ; 1885,501.

All other corporations incorporated under the laws of this state, and not hereinbefore provided for, shall pay a yearly tax of one tenth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars ; on all sums of capital stock issued and outstanding over three million dollars and not exceeding five million dollars, a yearly tax of one twentieth of one per centum, and the further sum of fifty dollars per annum per one million dollars, or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars ; *provided*, that this act shall not apply to railway, canal, or banking corporations, or to savings banks, cemeteries, or religious corporations, or to purely charitable

or educational associations, or manufacturing or mining corporations at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this state: N.J. 1891,93.

Every corporation in this state, or in any other state or country and doing business in this state, except only savings banks and institutions for savings, life insurance companies, banks, foreign insurance companies, manufacturing or mining corporations, or companies wholly engaged in carrying on manufacture or mining ores within this state, and agricultural and horticultural societies, associations, or corporations, which exceptions, however, shall not include gas companies, trust companies, electric or steam heating, lighting, and power companies, shall be liable to and shall pay a tax, as a tax upon its franchise or business, into the state treasury annually, to be computed as follows. If the dividend or dividends made or declared by such corporation, joint stock company, or association during any year ending with the first day of November amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one quarter-mill upon the capital stock for each one per centum of dividends so made or declared; or if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of one and one half mills upon each dollar of the valuation of the said capital stock, made in accordance with the provisions of the first section of this act; and in case any such corporation, joint stock company, or association shall have more than one kind of capital stock, as, for instance, common and preferred stock, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one quarter-mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends amount to six or more than six per centum, and in addition thereto tax shall be charged at the rate of one and one half mills upon each dollar of a valuation, made also in accordance with the provisions of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum: N.Y. 1890,522,3.

In several states (for the most part Southern) the state stock or franchise tax is fixed by special law, enacted every session of the legislature, for all companies: Md. 81,84.

And in Delaware there is no general system for the taxation of corporations; but each class, and often each corporation, is provided for by special or particular acts.

Corporations generally pay also a tax of three per cent on their net earnings: Pa. Taxes, 182.

If the dividends amount to six per cent or more than six per cent, then the tax to be at the rate of one half-mill upon the capital stock for each one per centum of dividend so declared. If no dividend be declared, or dividends not amounting to six per centum, then at the rate of three mills upon the dollar of valuation made as aforesaid; provision is made for the case of preferred stock, etc.: Pa. 1889,332,21.

All corporations, except banks and foreign insurance companies, must annually make a report to the auditor of the entire net earnings received during the preceding year, and pay a tax thereupon of three per cent in addition to tax on personal property: Pa. 1889,332,27.

All corporations, except banks and foreign insurance companies, domestic and foreign, doing business or having property in this state, must report to the auditor annually the total capital stock authorized, issued, and paid, the dates and rates of all dividends, the gross and net earnings, the surplus, sinking fund, and highest price of stock between November 1 and 15, and also during the year, and the average

price of stock during the year; and taxes are paid upon the par value of the stock if dividends have been declared to the amount of six per cent, or otherwise, at its actual value in cash, not less than its actual price during the year: Pa. 1889,332,20.

Every corporation from which a report is so required is subject to a state tax at five mills upon the dollar, and the actual value of its whole capital stock so ascertained, provided this section does not apply to manufacturing corporations, except brewing and distilling companies, and such as enjoy the right of eminent domain: Pa. 1891,200,5.

In the case of fire and marine insurance companies, tax imposed by this section is at the rate of three mills upon the dollar of the actual value of the capital stock: Pa. ib. [Compare Title IV.]

Any franchise granted by any law of this state, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed (1) as personal property: Ind. 1891,99,25; Tenn. 1889,93,4; (2) as realty: Wy. 3776.

In addition to the specific property of all corporations in this state which is now the subject of taxation under existing laws, the value of the franchise of the corporation shall be taxable, and such value shall be ascertained by the assessor of the county: Ky. 1890,317,10.

Corporations pay "the same rate upon their whole capital stock paid in as is levied on other capital, together with the same rate per cent upon their net annual profits:" Ga. 816.

**§ 8263. Returns for Taxation.** The clerk, president, or treasurer of every corporation is required to return annually to the assessors of each town<sup>a, b, c</sup> in which a stockholder resides (1) the name and amount of stock held by such stockholder: Mass.,<sup>a</sup> Me., Vt., R.I., N.J., Mich.

And also to the clerk of the town where the corporation has its place of business, a list of shares standing in the name of persons residing out of the state: Vt.

(2) The par value of such shares: Mass., R.I., Ind., Mich., Neb., Mo.,<sup>b</sup> Ark.

(3) The amount of capital stock authorized: Ind., Ill.,<sup>c</sup> Neb., Mo.,<sup>b</sup> Ark., N. Dak., Miss.

The amount of stock paid into such corporation: Me., Vt., N.Y.,<sup>b</sup> N.J., Ind., Ill., Neb., Mo.,<sup>b</sup> Ark., N. Dak., Miss., La.<sup>c</sup>

(4) The cash market value: Mass., R.I., Ind., Ill., Neb., Ark., N. Dak.,<sup>c</sup> Miss.

If none, the actual value: Ind., Ill., Neb., Mo.,<sup>b</sup> Ark., N. Dak.<sup>c</sup>

(5) The proportionate amount per share at which its real estate and machinery was last assessed: Vt. So, the total value thereof: Mass.

(6) The date, amount, and rate of every dividend declared during the year preceding: N.Y.

(7) The amount and value of any class of stock, or all the stock, upon which a dividend amounting to six per cent has not been paid: N.Y.

(8) Its accumulated surplus: N.J.

(9) The total indebtedness: Ind., Ill., Neb., Ark., N. Dak.

*Except* that for current expenses: Ind., Ill., Neb., Ark.

And except the amount paid for purchase or improvement of property: Ind., Ill., Neb., Ark.

(10) The assessed valuation of all its tangible property: Ind., Ill., Mo.,<sup>b</sup> Ark., Wash. "Real and personal:" Nev., Wash., N. Dak.

Its real estate in the state: N.Y., La.

All its property and assets: N.J., Mo.,<sup>b</sup>

(11) Its principal place of business: Neb., La.

(12) Of all its taxable property, like individuals: N.H., Mass., Me., Vt., R.I., Ct., N.Y.

(13) Its gross and net earnings: Mo.<sup>b</sup>

Mass.<sup>a</sup> 13,38; Me. 46,30; Vt. 285; R.I. 43,12; N.Y.<sup>b</sup> 1,13,4,1; 1881,361,1; N.J. Taxes, 75; Ind. 6357; Ill.<sup>c</sup> 120,32; Mich. 1880; Neb. 1,77,32; Mo.<sup>b</sup> §§ 1891, p. 72; Ark. 5615; 1887,92; Wash. 1891,190,20; N.Dak.<sup>c</sup> 1890,132,2; Miss.<sup>d</sup> 498; La. D. 3628. For other citations see § 8260.

The cashier or secretary of each corporation whose stock is liable to taxation, and not otherwise taxed by the provisions of this title, shall on the first day of October, annually, or within ten days thereafter, deliver to the comptroller a sworn list of all its stockholders residing without this state on said day, and the principal and market value of the shares of stock therein then belonging to each; and shall on or before the twentieth day of October, annually, pay to the state one per centum of such value: Ct. 3916.

"Market value" is the average of "closing" bids during September by any board of brokers: Ct. 3931.

All corporations, except banks and foreign insurance companies, are required to make return to an auditor, setting forth the authorized stock, number of shares authorized and issued, par value of each, amount paid, amount of capital, date and rate and amount of dividends, gross and net earnings, amount of surplus and profit, highest price of stock during the year, and average price: Pa. 1891,200,4.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state: Ind. 6357.

It is made the duty of the cashier of every bank, and secretary of every railroad, canal, or turnpike company, on or fifteen days before the first Monday of October, to make a return to the state treasurer of the amount of its capital stock actually paid in; and in default thereof, the whole capital stock mentioned in the act of incorporation shall, for purposes of state taxation, be deemed to have been paid in: Mich. 4883.

In order to enable the assessor to arrive at the true value of said franchise, he may examine the officers of such corporation under oath, or such other witnesses as he may deem necessary, and in fixing the value thereof shall consider the net earnings of the corporation, its dividends, and the market value of its stock, which, taken with the proof he may have before him, shall constitute the basis of his valuation: Ky. 1890, 317,11.

If the president or secretary intentionally neglect or refuse to make and file the annual statement as in section 8070 required, (1) they are jointly and severally liable for all debts of the corporation contracted during the period of such neglect: Ark. 980.

(2) The corporation is assessed on the whole capital authorized by the charter: Miss.

Corporations shall make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly, —

1. The name and location of the company or association.
2. The amount of capital stock authorized, and the number of shares into which said capital stock is divided.
3. The amount of capital stock paid up.
4. The market value, or, if they have no market value, then the actual value of the shares of the stock.
5. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.
6. The value of all real property, if any.
7. The value of its personal property. The aggregate amount of the fifth, sixth, and seventh items shall be deducted from the total amount of the fourth, and the re-



mainder, if any, shall be listed as bonds or stocks under subdivision 24 of section 16 of this act; the real and personal property of each company or association shall be listed and assessed the same as other personal property. In all cases of failure or refusal of any person, officer, company, or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain : S.Dak. 1891,14,22.

NOTES. — *a* To the state tax commissioner. *b* To the state comptroller. *c* To the assessor of the town where the corporation is. *d* Of the county. *e* “ And not invested in real estate : ” La.

**§ 8264. The Penalty** against all such corporations shall be the forfeiture of their charters, and if not chartered by this state, then the immediate suspension of their business therein : Ga. 877.

The charters of all corporations, incorporated under any special or general law of this state, that have failed to pay the taxes imposed upon them by law, and payable into the state treasury, and in arrears therefor, or for any part thereof, for the space of two years, be and the same are hereby repealed, and declared null and void, unless the governor for good cause shown to him shall give further time : N.J. 1891,119.

The dues from all private corporations which have been or may be organized under the general laws and under the present constitution of this state, other than banking and road corporations, and other than those where security has already been provided, shall be secured in the manner hereinafter provided : Ind. 3018.

Tax collectors may levy and take possession of property belonging to persons or corporations for taxes, although such property be in the hands of a receiver : N.C. 699.

In such cases it is not necessary for the tax collector to obtain an order from the court appointing such receiver : N.C. 700.

**§ 8265. Preliminary Fees.** Business corporations authorized to do their principal business outside of the state, having a capital stock, must pay \$100 as a preliminary fee before applying to the legislature for a charter ; and before commencing to do business must pay the state treasurer not less than \$100 and not more than \$5,000, as determined by the state board of equalization ; and if it increases its capital stock must pay an additional fee to the state treasurer to be determined in the same way; and no certified copy of the charter can be issued by the secretary of state until the two preliminary payments above mentioned have been made. These sums are in lien of all other taxes upon the franchise of a corporation ; but are not in lien of taxes imposed by law upon the property of the corporation, or the shares of stock held by individual stockholders residing in the state. These provisions do not, however, apply to mutual life insurance corporations doing business in whole or in part upon the mutual plan : Ct. 1912-1916.

All taxes are required by law to be paid before incorporation, and the fees for filing and recording such certificate must be paid before filing ; and no corporation shall exercise any corporate powers or privileges until such taxes or fees have been paid : N.Y. 1890,563,3.

The following are the preliminary fees required to be paid to the secretary of state upon filing the articles<sup>a</sup> of incorporation : \$25 for all corporations having a capital authorized not over \$100,000, or 20 cents per \$1,000 of capital if more : N.J. Supp. Corps. 17 ; \$10 if under, \$20 if over \$50,000 : Del. V. 17,147,36 ; \$25 : N.C. 678 ; \$50 for \$50,000, and \$5 for each additional \$10,000 : N.Dak. 1890,139 ; 1891,105.

At the time of filing the articles, the incorporators must pay into the state treasury (1) \$50, (\$100, R.I.), and the further sum of \$5 for every additional \$10,000 over \$50,000 of its capital stock ; and in case of increase of stock, \$5 must be paid for every \$10,000 of such increase, and the receipt of the state treasurer for these payments must be filed, like the articles of incorporation, with the secretary of state : Mo. 2493.

(2) One eighth of one per cent upon the capital stock of all corporations incorporated either under general or special law : N.Y. 1886,143 ; Md. 1890,536.

(3) One quarter of one per cent : Pa. Corps. 74 ; Taxes, 187.

(4) One half-mill on each dollar : Mich. 1891,182.

(5) One tenth of one per cent : Ind. 1891,70 ; R.I. 27,14.

(6) Ten cents on each \$1,000 : Col. 1885, p. 153.

And the same on any increase of stock : Md., Ind.

One sixth of one per cent upon an increase in companies already existing : Md.

Upon filing any amended certificate of incorporation, or a certificate of consolidation, \$20 must be paid : N.J. Supp. Corps. 18.

Upon filing a certificate of increase of stock, \$20 plus 20 cents per \$1,000 of the amount of increased stock beyond \$100,000 : N.J. Supp. Corps. 19.

So, the same tax provided above is payable upon any increase of stock : N.Y. 1886, 143 ; Pa.

Until such fees are paid, the secretary, etc. may not receive or file such certificate : N.J. Supp. Corps. 20.

No application for a charter for any business corporation authorized to do and perform its principal business outside the limits of this state, having a capital stock all or any part of which is to be divided into shares and held by shareholders, shall be heard by the general assembly, or any committee thereof, until the parties applying for the same have paid to the treasurer of the state one hundred dollars : Ct. 1912.

No such business corporation having a capital stock, hereafter incorporated, shall commence to do business until it shall have paid to the treasurer of the state not less than one hundred dollars and not more than five thousand dollars, as the same may be assessed and determined by the state board of equalization : Ct. 1913.

NOTE. — " Or the certificate of organization : N.J.

**§ 8266. Fraudulent Transfer.** If a shareholder fraudulently transfers a share in any corporation to avoid taxation, he shall forfeit to the use of the county wherein he resides one half of the par value of the shares thus transferred, to be recovered in an action of tort : Fla. 34,24 ; Mich. 4882 ; and if he wilfully misinforms the corporation in any way to impede or prevent the assessment or collection of his tax, he shall forfeit a sum not less than one hundred nor more than five hundred dollars : Fla.

**§ 8267. Foreign Stocks and Property.** From and after the passage of this act it shall not be lawful for any assessor in this state, and no tax shall be levied and collected on any investment in securities or stocks of other states, or of companies incorporated by other states or of the United States, made or held by residents, firms, companies, associations of persons, or corporations of this state : Del. V. 17,236,1.

" All other corporations not incorporated by this state, and agents doing business in this state as aforesaid, shall be assessed for the amount of capital usually employed in this state in the doing of such business not otherwise taxed by virtue hereof ; and such statement shall be made in the township or ward where such business is most usually carried on and transacted : " N.J. Taxes, 77.

Any company or corporation organized under the laws of this state, and owning property in any other state or country, as well as in this state, shall not be required to return its capital for taxation in this state, but shall return such property as it owns in this state, and such proportion of the value of its other property as, if owned by the individual residents of this state, would be taxable in this state ; and if such return be made by such company, the shareholders therein shall not be required to return their shares for taxation : S.C. 194.

A corporation organized under the laws of this state, but owning no property in this state, shall not be required to return its capital for taxation in this state : S.C. 195.

§ 8268. **General Provisions.** No tax shall be levied upon persons for the benefit of any chartered company of the state, or for paying the interest on any bonds issued by said chartered companies, or by counties, or by corporations, for the above mentioned purposes: Fla. 174,8.

So much of the charter of any corporation as exempts it from taxation is repealed: Vt. 1882,1,43; N.C. 1891,323,6.

A company taking the benefit of this act of Rev. Laws, chap. 158, waives any exemption from taxation contained in its charter or otherwise: Vt. 1882,35,4.

## CHAPTER III.

### OF SUITS BY AND AGAINST CORPORATIONS, AND THEIR DISSOLUTION.

#### Art. 830. Suits.

NOTE. — For general provisions affecting procedure see in Volume III. This article contains, as a rule, such provisions only as are found, not in the codes of procedure, but in the corporation laws.

§ 8300. **May be sued like Natural Persons.** Suits may be instituted and prosecuted by and against any corporation formed or organized under this act, in the same manner, and in like cases, as natural persons: N.M. 221; Wis. 3204; W.Va. 52,18; Col. 264.

The same is doubtless the case everywhere.

§ 8301. **Venue.** Suits against corporations may be commenced (1) in the county where the cause accrued: Ky. Civ. C. 72; Mo.; La. D. 725; N. M. 223; Col.; Ariz.; (2) in any county where the corporation has an office or agent for the transaction of its usual business: Ky.; Mo. 2529; Col. 267; Wash. Hill's C. P. 160; Ariz. 674; Fla. 162,23; N.M.

Corporations may sue and be sued either in the county in which they have an established place of business, or in which the other party, if an actual person, lives: Me. 81,13.

Companies incorporated in the state, whose office is situate and whose officers reside outside the state, may be sued in any county where they transact business, or have works and real estate, by publication: Pa. Corps. 102.

Any corporation chartered by authority of this state may be sued on contracts in that county in which the contract sought to be enforced was made, or is to be performed if it has an office and transacts business there. Suits for damages because of torts, wrong, or injury done, may be brought in the county where the cause of action originated: Ga. 1885, p. 99.

Suits against corporations shall be commenced in the county where the principal place of business may be: Miss. 1034; Fla. 34,17; except suits at law or equity against railroad, express, steamboat, telegraph, and insurance companies or corporations, which may be sued in any county, as provided in the circuit court law as to the venue of actions: Miss.

§ 8302. **Process.** Actions against a corporation are begun by a summons, returnable in like manner and subject to the same rules and regulations as a like process in the case of individuals: Mo. 2526; Miss. 1034; Pa. Corps. 92; Mich. 8137; Fla. 14,18; Minn. 5562.

Service is sufficient if made (1) on the president: N.Y. C. C. P. 431; Pa. Corps. 92; Mich. 8137; Kan. 80,68; Neb. 2,73; Ky. Civ. C. 51; Tenn. 3536; Mo. 2527; Ark. 4979; Tex. 1223; Cal. 10411; Ore. 55; Nev. 3051; Col. 267; 1891, p. 82; Wash. 63; 1891, 58, 3; Dak. C. C. P. 102; Ida. 4144; Mon. C. C. P. 744; Wy. 2431; Uta. 3208; S.C. C. C. P. 155; Ga. 3369; Ala. 2657; Miss. 1034, 1529; Fla. 34, 18; 162, 23 & 24; N.M. 223; Ariz. 704.

Or, in his absence, by leaving a copy at any business office of the company with a person having charge thereof: Mo., Fla.; or upon any other officer or stockholder: Col., Miss., Fla., N.M.

(2) Upon the clerk or secretary or cashier, or (except in Wash.) upon any resident director: Ct. 908, N.Y., Pa., Mich., Kan., Neb., Tex., Tenn., Ark., Cal., Nev., Ore., Col., Wash., Dak., Ida., Mon., Wy., Uta., S.C., Miss., Ala., N.M., Ariz., Fla.

Or, if none, at the usual place of business of the corporation in the state: Ct., Mon.

(3) Or treasurer: N.Y., Mich., Tex., Tenn., Col., Dak., Wy., S.C., Miss., N.M., Ariz., Fla.

(4) Upon any officer: Ga., Fla.

Or upon the local agent representing such company or association in the county in which suit is brought, or by leaving a copy of the same at the principal office of the company during office hours: Ky.; Tex. 1223; Ore.; Ariz.

Upon "the managing agent:" N.Y., Cal., Ore., Wash., Dak., Col., Ida., Mon., Wy., S.C., Ala., Miss., Fla. 1885, 3590.

"In the county where the action arose:" Fla.

On any agent having charge of property: Uta.

Upon any agent: N.M.

Or stockholder: N.M., Col.

Process may be served on the president or head officer if residing in the state, and, if not, on any officer or director or manager: Pa. Corps. 94; Del. 70, 6; Md. 23, 296; Tenn.: Miss.

If no such officer can be found, on such other officer or member, or in such other manner, as the court direct: Mich.

When any personal action shall be commenced against a corporation in any of the courts of law of this state, the first process to be made use of may be a summons, a copy whereof shall be served on the president or other head officer of said corporation, or left at his dwelling-house or usual place of abode, at least six entire days before its return; and in case the president or other head officer of the said corporation cannot be found in this state, to be served with process as aforesaid, and has no dwelling-house or usual place of abode within this state, then a copy of the said summons shall be served on the clerk or secretary of the said corporation, if any there be, and if no clerk or secretary, then on one of the directors of the corporation, or left at his dwelling-house or usual place of abode, six entire days before its return: N.J. Corps. 87.

Or, if none of the aforesaid officers can be found, by a copy left at the usual office or place of business of such corporation, with the person having charge thereof: Kan. 80, 68; Wy.; Ga.

If neither the president, nor any of the directors, managers, or other officers of such corporation, reside in this state, such process may be served anywhere within this state on any agent, attorney, or other person in the service of such corporation: Md. 23, 296; Tenn. 3537.

In a suit against a corporation whose officers reside out of the state, process may be served by twenty days' publication of the substance thereof in a newspaper of this state, and of the state where the head officer resides: Del. 70, 7.

If no such person be found, it shall be sufficient to post a copy of the process at the door of the office or place of business of the corporation: Miss. 1034, 1529.

When any writ or process against a corporation has been returned executed, the defendant shall be considered in court, and the action may proceed as actions against natural persons. And any corporation, under its corporate seal and the signature of its president, may execute all bonds which shall be necessary at the commencement or during the progress of any case to a final determination, and such bonds shall be binding on the corporation : Miss. 1035.

If the corporation have no business office in the county where suit is brought, or no person is found in charge thereof, and the president cannot be found in such county, a summons shall be directed to the sheriff of any county where the president may reside or be found : Mo. ; Col. 267 ; N.M.

Or where any office or place of business of such company may be kept : Mo., N.M.

In case the officer return a summons not served, and it shall be made to appear to the court that process cannot be served, the court makes order for publication in the same manner as in case of suits against non-residents in civil cases : Mo. 2531 ; N.C. 1889,108 ; Nev. 3052 ; 1889,10 ; Ore. 56 ; Wash. ; Uta. 3210. See § 8409.

Service may be made by publication upon simple affidavit that no officer or place of business can be found within knowledge of the plaintiff : Ga. 3370.

All notices, orders, and rules required to be served in the progress of any cause shall be served in like manner as in other civil cases : Mo. 2530.

§ 8303. **Attachment.** Corporations are subject to attachment like individuals : Del. 14,90. So, doubtless, in all states ; see in Vol. III. In many states foreign corporations are specially made liable to attachment of their property in the state without other cause ; see § 8409.

If the property of a corporation is attached by a director, it gives way to an attachment made by another creditor before its return : Vt. 3254.

§ 8304. **Garnishment.** Proceedings against garnishees under this article shall be the same as against a garnishee in an original attachment ; but no judgment may be rendered against him for any debt to become due at a future day until after due : Mo. 2535.

Corporations are subject to garnishment like individuals : Mich. 1891,178 ; Del. 14,90 ; W.Va. 52,19 ; Tex. 208 ; Mo. 5222 ; Fla. 103,2.

So in all states ; see in Vol. III.

For all moneys paid by such garnishee he is credited against the corporation to whom it was due : Mo. 2536.

§ 8305. **Execution.** When damages have been assessed in favor of a person (either by an order of county commissioners or by the verdict of a jury : Mass., Del.) for an injury sustained in his property by the doings of any corporation (except railroads : Mass.) authorized to receive toll (or pay for the transportation of persons or property : Mich.), and the damages remain unpaid for thirty days after the order or verdict, such person may have a warrant of distress against the corporation for the damages assessed, together with interest thereon and his reasonable costs : Mass. 105,29 ; Mich. 4876 ; Del. 70,12.

And have the same proceedings thereon as in Art. 831 : Mich., Del.

Upon demand of payment of a debt of a corporation being made, if the same shall not at once be paid, or unencumbered personal property sufficient to satisfy it be exposed, the officers of the corporation shall forthwith call a meeting of the stockholders to provide means for its payment, by assessments upon themselves or otherwise, within sixty days from the date of such demand. If an officer whose duty it may be to call such meeting shall unreasonably neglect or refuse to call the same, he shall

forfeit one thousand dollars, to be recovered in an action of debt by any person injured : N.H. 151,4.

When an officer, having an execution against a corporation not created for purposes of education or religion, certifies thereon that he is unable to find personal property of the corporation, the creditor may cause so much of its real estate to be seized, and sold at public auction in the town where it lies, in the manner provided for the sale of real estate of banks, and subject to the same right of redemption, as is necessary to satisfy such execution and incidental charges : Me. 46,50.

Every agent or other person having charge of any property of a corporation, on request of any public officer having for service a writ of execution against it, shall furnish the names of the directors and secretary or stockholders thereof, and a schedule of all of its property, including debts due or to become due to such corporation, so far as he may have knowledge of the same : N.J. Corps. 66.

If any such officer holding an execution shall be unable to find other property belonging to such corporation liable to execution, he, or the judgment creditor, may elect to satisfy such execution, in whole or in part, by any debts due the same, not exceeding the amount thereof; and it shall be the duty of any agent or other person having the custody of any evidence of such debt to deliver the same to the officer for the use of the creditor; and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of such corporation, subject to such equitable set-offs on the part of the debtor as may be in other assignments : N.J. Corps. 67.

Every agent or other person, who shall neglect or refuse to comply with the provisions of the two preceding sections, shall be himself liable to pay to the execution creditor the amount due on said execution, with costs : N.J. Corps. 68.

Plaintiff may have execution (by) *fiery facias* to levy the sum of said judgment, with interest and costs of suit, of any personal, mixed, or real property, franchises, and rights of such corporation, and thereupon proceed and sell the same, excepting lands held in fee, which latter shall be proceeded against and sold in the manner provided in cases for the sale of real estate; *provided*, that the purchaser or purchasers of any or all of said property, real, personal, or mixed, together with the franchises and rights, shall take the same clear of all encumbrances, excepting any mortgage or mortgages which may legally exist at the time of levy thereupon, the lien of which shall not be affected in any manner by said sale : Pa. Corps. 118.

By virtue of any execution issued under this act, the levy may extend to the property, franchises, and rights of said corporation in any and every county of this commonwealth wherein the same may be : Pa. Corps. 119.

If any judgment or decree shall be rendered against a corporation, the plaintiff may sue out such executions against the property of a corporation as is provided in this code to be issued against the property of natural persons, which executions may be levied as well on the current money as on the goods, chattels, lands, and tenements of such corporation : N.C. 671.

When an execution has been sued out and levied upon the personal property of a corporation, such personal property may be sold, and the title to such property shall pass to the purchaser at said sale, independent of the franchise and real estate of such corporation : N.C. 672.

The return shall express the mode of execution; and if not on the chief officer, that he was absent or could not be found : Mo. 2528.

The process upon a judgment against any corporation shall be *fiery facias*, which the sheriff or other officer shall levy on the moneys, goods and chattels, lands and tenements of such corporation, and proceed thereon as in civil cases : Mo. 2533; Ark. 3089.

"*Fieri facias*, a distrain, or elegit : " Fla. 102,2.

If a judgment be not satisfied, alias rights of execution may be issued : Mo. 2534.

If any moneys remain in the hands of the officer after satisfying the judgment and all costs, he shall pay the same to the corporation or its order : Mo. 2537.

Whenever a judgment shall exist against any corporation chartered under the laws of this state, or doing business within its limits, and an execution issued thereon cannot be satisfied in whole or in part, for want of property of the defendant subject to levy and sale out of which to satisfy the same, upon the petition of the judgment creditor, or of his agent or attorney, the judge of the circuit court within whose circuit such corporation may have been doing business, or in which any of its effects are to be found, may by order sequester the property, things in action, goods and chattels of such corporation, for the purpose of enforcing such judgment, and may appoint a receiver for the same, and the receiver so appointed shall be subject to the rules prescribed by law for receivers of the property of other judgment debtors : Fla. 103,1.

**Costs.** Where railroad or other corporations not municipal are liable either as principals or guarantors for the interest on bonds, and such corporations subject the holders of such bonds to the necessity of bringing suits to recover the interest, they shall, in addition to ordinary costs, pay the plaintiff's counsel fees not exceeding ten per cent of the amount : Pa. Corps. 106.

§ 8306. **Insolvency.** Corporations may take the benefit of the insolvency laws : Mass. 157,127. See in Part IV.

**Usury.** They may not, in some states, interpose the defence of usury. See §§ 4835, 8208.

§ 8307. **Evidence.** The records of any company incorporated under the provisions of any statute in (of) this state, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence (1) in any action or proceeding to which such corporation may be a party : Kan. 23,39 ; Mo. 2532 ; Tex. 601 ; Nev. 817 ; Fla. 34,31.

(2) So, in actions against the stockholders : Nev. Compare §§ 8024, 8155.

In any proceedings by or against a corporation, the court shall have the power to compel the officers of the corporation, on the motion of either party, upon proper cause being shown, to produce the books of the corporation, and when so produced, either party may use the same in evidence : Ky. 56,16 ; Ariz. 247.

The admission of a member of an aggregate corporation, who is not a party, shall not be received as evidence against the corporation, unless it was made concerning and while engaged in a transaction in which he was the authorized agent of the corporation : N.Y. Civ. P. 839.

## **Art. 831. Remedies against Franchise.**

§ 8310. **Attachment.** The property of any corporation, and the franchise of one having a right to receive a toll established by the state, with its privileges and immunities, are liable to attachment on mesne process and levy on execution for debts of the corporation, in the manner prescribed by law : Me. 46,20.

The franchise of a corporation authorized to receive toll, and all the rights and privileges thereof, shall be liable to attachment on mesne process ; and, when such attachment or other service of mesne process is made on a corporation, the officer serving the same shall leave an attested copy of the process, and of his return thereon, with the clerk, treasurer, or some one of the directors of the corporation, (1) fourteen days at least before the day of the sitting of the court to which the same is returnable : Mass. 105,30.

(2) No time is specified : N.H. 232,15.

(3) Thirty days: Del. 70,11; Me. 81,19 & 28.

So, all other property of a corporation may be attached: Me.

§ 8311. **Sale of Franchise.** The franchise of a corporation may be levied upon and sold: Io. 1086.

But the corporation is not thereby dissolved: Io.

And no dissolution of the original corporation shall affect the franchise, but the purchaser becomes invested with all the corporate powers therefor: Io.

The franchise of any corporation authorized to take tolls may be taken and sold on execution at auction: N.H. 232,12.

Whenever final judgment shall be recovered against any turnpike (R.I., Mich., Wis.; bridge, Me.; canal, Me.; railroad, Me. 76,46), or other corporation (authorized to receive tolls<sup>a</sup>), the franchise of such corporation, with all the rights and privileges thereof, so far as relates to the receiving of toll, and also all other corporate property (Mass., R.I., Wis., Del., N.C., Miss.), may be taken on execution and sold, (1) in the same manner as real estate belonging to corporations is liable by law to be taken and sold on execution: R.I. 152,9; N.C. 671.

(2) At public auction: Mass. 105,31; Mich. 4868; Me. 84,17; Wis. 3229; Del. 70,9; Miss.<sup>a</sup> 1038.

In Connecticut there is a similar statute applying only to a turnpike or toll-bridge company, and a receiver is appointed: Ct. 1172.

For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise and all the rights and privileges thereof may be levied upon and sold under execution, in the same manner and with like effect as any other property: Cal. 5388; Dak. Civ. C. 442; Ida. 2642; Oka. 1019.

But without any exemption: Dak., Oka. Or appraisement: Io.

NOTE. — <sup>a</sup> This clause does not appear: Miss.

§ 8312. **Mode of Sale.** The officer having such execution against a corporation must give thirty days' notice of the sale of the franchises or other property by posting (1) in any township in which the clerk, treasurer, or any one of the directors of the corporation may dwell, and also by advertisement, expressing the name of the creditor, amount of the execution, and the time and place of sale, by three weeks' publication in some newspaper published in such county (or, if none, in the state paper: Mich., Me.): Mass. 105,32; Mich. 4869; Me. 84,17; Wis. 3230.

(2) At the toll-house and in two public places in the town in which any toll-house is situated: N.H. 236,12.

(3) "Due notice by advertisement and also by publication:" Del.

The officer may adjourn the sale from time to time (1) as may be necessary: Mich. 4870.

(2) Not exceeding seven days: Mass. 105,33.

(3) Not exceeding ten days: Del.

All the proceedings aforesaid respecting the levy of executions and warrants of distress may be had in any county in which either the creditor, or the president, or any director, or the treasurer, or clerk of the corporation may reside: Mich. 4877; Mass. 105,39.

Or in which such corporation has personal or real estate: Mich.; Cal. 5393; Dak. Civ. C. 447; Oka. 1024.

Or in which is its principal place of business: Cal., Dak., Ida. 2647, Oka.



§ 8313. **Purchaser.** In the sale of such franchise, the person who satisfies the execution or warrant of distress, with all legal fees and expenses thereon, and who agrees to take such franchise for the shortest period of time, and to receive during that time all such toll<sup>a</sup> as the corporation would by law be entitled to demand, shall be considered as the highest bidder: N.H. 232,13; Mass. 105,34; R.I. 125, 10; Mich. 4871; Me. 84,18; Del. 70,10; Miss. 1038; N.C.<sup>a</sup> 673; Wis. 3231.

NOTE. — <sup>a</sup> "Fare and toll:" N.C.

§ 8314. **Effect of Sale.** The officer's return on the execution or warrant of distress shall transfer to the purchaser all the privileges and immunities of the corporation, so far as relate to the right of demanding toll; and the officer shall immediately after the sale deliver to the purchaser possession of all the toll-houses and gates belonging to the corporation,<sup>a</sup> in whatever county the same are situated; and the purchaser may thereupon demand and receive to his own use all the toll which accrues within the time limited by the term of his purchase: Me. 84,18 & 19; Mass. 105,35; R.I. 152,11; Mich. 4872; Del. 70,10; Miss. 1038; N.C.<sup>a</sup> 674; Wis. 3232.

In the same manner and under the same regulations as the corporation was before authorized to demand and receive the same: Mass., Mich., Me., Del., N.C., Wis.

So, the purchaser must receive a certificate, and be immediately let into the possession of all necessary property for the exercise of such powers and the receipt of the proceeds: Cal. 5389; Dak. Civ. C. 443; Ida. 2643; Oka. 1020.

He shall also discharge all the duties imposed by the charter on the corporate body, and be liable to penalties, as the original parties were liable, which may have accrued after his purchase of the franchise: Miss. 1038.

A person who has purchased the franchise of a corporation under a sale upon execution or warrant of distress, and the assignee of such person, may recover in an action of tort or on the case any penalties imposed by law for an injury to the franchise or for other cause, and which such corporation would have been entitled to recover during the time limited in the purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties: Mass. 105,36; R.I. 152,12; Mich. 4873; Miss. 1038; Cal. 5390; N.C. 675; Dak. Civ. C. 444; Ida. 2644; Wis. 3233; Oka. 1021.

He shall have all the powers of the corporation necessary for the convenient use of the property, be subject to the same duties and penalties during the term of said purchase (and may recover of said corporation any moneys paid or expenses incurred in consequence of such liability, and without their fault or negligence: Me.): Me. 84,19; Cal. 5389; Dak. Civ. C. 443; Miss. 1038; Ida. 2643; Oka. 1020.

And during that time the corporation shall not be entitled to sue for such tolls, or to prosecute for any penalty for the non-payment thereof: R.I. 152,11; Mich. 4873.

The corporation whose franchise has been so sold shall in all other respects retain its powers, be bound to the discharge of its duties, and liable to the same penalties and forfeitures as before the sale: Mass. 105,37; R.I. 152,13; Wis. 3234; Mich. 4874; Del. 70,10; N.C. 676; Cal. 5391; Dak. Civ. C. 445; Ida. 2645; Oka. 1022.

So, the rights and obligations of the corporation, except as to such tolls, shall not be affected by such sale: N.H. 232,14.

NOTE. — <sup>a</sup> "Of all the corporate real property connected with the franchise:" N.C.

§ 8315. **Redemption.** The corporation may at any time within three months (one year: Cal., Ida., Wis., Dak.; six months: Miss.) from the time of sale redeem the franchise by paying or tendering to the purchaser the sum he paid, with twelve per cent (ten per cent: Milh., Miss., Cal., Ida.) interest thereon (N.H. 236,14; Mass.; Me. 84,20; Del. 70,10), but without any allowance for the toll which he has received; and upon such payment or tender the franchise and all the rights and privileges thereof shall revert and belong to the corporation as if no such sale had been made: Mass. 105,38; R.I. 152,14; Wis. 3235; Mich. 4875; Miss. 1039; Cal. 5392; Dak. Civ. C. 446; Ida. 2646; Oka. 1023.

“In addition to the toll received:” Me.

§ 8316. **Application of Article.** The provisions of the four preceding sections apply to the franchises of railroad corporations whose railroads lie wholly within the state, except that notice shall be given of the time and place of such sale by posting a notification thereof at the court-house in each county through which such railroad runs, either wholly or in part, for thirty days at least before the day of sale, and by causing an advertisement to be inserted for three weeks successively in at least one newspaper published in each county through which the road runs, and at the office of said company. The officer shall deliver to the purchaser a conveyance by deed of the franchise so sold: Me. 84,21.

## **Art. 832. General Provisions of Procedure.**

### **§ 8320. Evidence.** (See Art. 830.)

§ 8321. **Actions against Officers.** The proper court (1) may compel the officers of any corporation to account for their official conduct in the management and disposition of the funds and property committed to their charge.

2. May decree and compel payment by them to the corporation which they represent, and to its creditors, of all sums of money and of the value of all property which they have acquired to themselves, or transferred to others, or have lost or wasted by any violation of their duties as such officers.

3. May suspend any such trustee or other officer from exercising his office whenever it appears that he has abused his trust.

4. May remove any trustee or officer from his office upon proof or conviction of gross misconduct; (or where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies: N.Y.)

5. May direct, if necessary, a new election to be held, by the body or board duly authorized for that purpose, to supply any vacancy created by such removal.

6. May set aside all alienations of property made by the trustees or other officers of any corporation contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purpose for which the same was made.

7. May restrain and prevent any such alienation in cases where it is threatened, or there is good reason to apprehend that it is intended: N.Y. Civ. P. 1781; Minn. 5557.

An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the state; or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation having a general superintendence of its concerns: N.Y. Civ. P. 1782.

**Art. 833. Voluntary Dissolution.**

§ 8330. **When allowed.** (See also § 8332.) A corporation may be dissolved (A) upon motion of the directors or trustees, (1) when insolvent or of insecure solvency : O. 5651 ; Mich. 8174.

(2) When for any other reason they deem it beneficial : N.H. 147,10 ; N.J. Corps. 1 & 34 ; O. ; Mich. ; Md. 23,265 ; Del. V. 17,147,21 ; Ida. 5107 ; Uta. 3836.

(3) When the objects of the corporation have wholly failed, are entirely abandoned, or have become impracticable : O.

A majority of such directors, etc. must apply : O., Del., Ida, Uta.

(B) Upon motion of the stockholders, a majority <sup>a</sup> concurring, for reasonable cause : N.H. 1891,46 ; Mass. ; Pa. Corps. 90 ; O. 5651 ; Md. ; W.Va. 53,56.

For the same causes as under A provided : O.

For any cause : Ky. 56,8 ; Cal. 11227 ; Ore. 3235 ; Nev. 823 ; Ida. 5185 ; Wy. 993 ; Uta. 3834 ; Ala. 1683 ; Oka. 993. And compare § 8331.

Such majority means, usually, a majority in value.

(C) In either case two thirds of the stock must concur : N.J. ; Wis.<sup>a,b</sup> 1789 ; Neb. 16,134 ; Del. ; Cal. 11228 ; Col. 1891, p. 95 ; Ida. 5186 ; Wy. 654 ; Uta. 2274,3835 ; Oka.

Or one fourth of the stockholders : N.H.

So, three fourths : Ala.

At a meeting specially called for the purpose : N.J., Wis., Md., Del., Cal., Ore., Col., Ida., Wy., Uta., Oka.

At any general meeting : W.Va.

On notice, as in case of amending the charter (§ 8090) : Col.

(D) The dissolution of corporations is provided for, —

1. If involuntary, in Chapter V. of Title X., Part II., of the Code of Civil Procedure (Art. 834) : Cal., Dak., Oka.

2. If voluntary, in Title VI., Part III., of the Code of Civil Procedure (Art. 833) : Cal. 5399 ; Dak. Civ. C. 418 ; Oka. 993.

3. By the expiration of the time limited in its articles : Dak. ; Ga. 1684 ; Oka.

4. By forfeiture of its charter : Ga. 1684.

5. By surrender of its franchises : Ga.

6. By the death of all its members without provisions for a succession : Ga.

Or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law : Neb. 2,704.

A corporation may be dissolved by a voluntary surrender of its franchises to the state. In such case such surrender does not relieve its officers or members from any liability for the debts of the corporation : Ga. 1686.

The death of all the members of a corporation, or of so many of them as to render it impossible under the charter to provide a succession, is a dissolution thereof : Ga. 1687.

A corporation which has deemed it advisable to suspend its ordinary business, (except in case of insolvency, and for want of funds.) and which is not transacting business, and may have omitted to file reports, is not therefore deemed dissolved, only liable to be dissolved by reason thereof ; *provided* its corporation organization be maintained, and all fees and taxes be paid, and reports made upon resuming business : N.J. 1890,217.

A corporation is not dissolved by the non-use or assignment to others, in whole or in part, of its powers, franchises, and privileges, unless all the corporate property has been appropriated to the payment of its debts ; and any creditor, for himself and other creditors, whether he has recovered judgment or not, or any stockholder, for himself

and other stockholders, may file a bill under the provisions of this chapter to attach the corporate property, and have such property applied to the payment of the debts of the corporation, and any surplus divided among the stockholders: Tenn. 4168.

A corporation legally established may be dissolved,—

1. By an act of the legislature, if they deem it necessary or convenient to the public interest; provided that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or engaged their property, it cannot be repealed without providing for the reimbursement of the advances made, or making full indemnity to such individuals.

2. By the forfeiture of their charter when the corporation abuses its privileges, or refuses to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation: La. 447.

NOTES. — <sup>a</sup> Such dissolution may be on such vote (for any cause): Wis. <sup>b</sup> When no other mode is specially provided: Wis.

§ 8331. **Premature Dissolution.** No corporation can be dissolved prior to the period fixed in the articles, except by unanimous consent, unless a different rule has been fixed in the articles: Io. 1066.

So in other states; but a majority of the stock is sufficient: Ky. 56,8; Ariz. 239.

Unless a different rule is adopted in the articles: Ky.

**Determination of the Charter** period dissolves a corporation *ipso facto*: Wis. 1789; Kan. 23,40; Tex. 604; Wy. 655; Ga. 1684.

So, when a mode of dissolution has been provided in the articles, it shall be conducted accordingly: Wis. 1789.

§ 8332. **Process.** (See also § 8360.) When the charter of a corporation expires or is annulled (or the corporation is dissolved as provided in section 8330: Mass., N.J., Minn., Del., Ala.), (or its corporate existence for other purposes is terminated in any other manner: Mass., N.Y., Del., Mon.), (or the corporation is insolvent, or in imminent danger of insolvency: N.C.), (or has forfeited its corporate rights, either for non-user or abuser, or any other cause: N.C.), the supreme<sup>a</sup> judicial court, on application of a creditor, stockholder, or member (at any time within said (see § 8355) three years: Mass., Vt., Ind., N.C., Minn.), (or within three years from the time of such insolvency: N.C.), may appoint one or more persons to be receivers, to take charge of its estate and effects, and to collect the debts and property due and belonging to it, with power to prosecute and defend suits in its name or otherwise, to appoint agents under them, and to do all other acts which might be done by such corporation, if in being, that are necessary for the final settlement of its unfinished business. The powers of such receivers may be continued as long as the court deems necessary for said purposes: Mass. 105,42; Vt.<sup>a</sup> 3273; N.J.<sup>a</sup> Corps. 60; Ind.<sup>a</sup> 3012; Minn.<sup>a</sup> 3138; Del. V. 17,147,35; N.C.<sup>a</sup> 668; Mon. C. C. P. 230; Ala. 1686.

Or the court may continue the directors as trustees: N.J., Del. (Compare § 8355.)

When a majority in number or interest (three fourths in interest: Ala.; one fourth: N.H.) of the members of a corporation desire to close its concerns, they may apply by petition to the superior or supreme court, setting forth in substance the grounds of their application, and the court, after due notice to all parties interested and a hearing, may for reasonable cause decree a dissolution of

the corporation. A corporation so dissolved shall be deemed and held extinct in all respects as if its corporate existence had expired by its own limitation: N.H. 1891,46; Mass. 105,40; Minn. 3142; Ala. 1683-85; Fla. 34,26.

Any corporation formed under this act may dissolve and disincorporate itself by presenting to the district (probate, in Uta., N.M.) judge of the district in which the office of the company is located a petition to that effect, accompanied by a certificate of its proper officers setting forth that at a meeting of the stockholders, called for the purpose, it was decided by a vote of a majority (two thirds: Mon., Uta., N.M., Wash.) of the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks (four weeks: Mon., Uta., N.M.), or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state (by posting, in Mon.). At the time or place appointed, or at any other time or place to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved: Nev. 823; Wash. 2442; Mon. G. L. 488; Uta. 2274; N.M. 211.

A corporation may be dissolved by the superior court<sup>a</sup> of the county where its principal place of business is situated, upon its voluntary application for that purpose.

The application must be in writing, and must set forth, —

1. That at a meeting of the stockholders or members called for that purpose the dissolution of the corporation was resolved upon by a two-third vote of all the stockholders or members.

2. That all claims and demands against the corporation have been satisfied and discharged.

The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

If the court is satisfied that the application is in conformity with this title, a judge thereof must order it to be filed with the clerk, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county; and if there are none such, then by advertisements posted up in three (five: Dak.) of the principal public places in the county.

At any time before the expiration of the time of publication, any person may file his objections to the application.

After the time of publication has expired the court may, upon five days' notice to the persons who have filed objections, or without further notice if no objections have been filed, proceed to hear and determine the application, and, if all the statements therein made are shown to be true, must declare the corporation dissolved.

The application, notices, and proof of publication, objections (if there be any), and declaration of dissolution, constitute the judgment roll; and from the judgment an appeal may be taken, as from other judgments of the superior courts: Cal. 6127-6133; Dak. Civ. C. 418; Oka. 993.

When the charter of a corporation expires or is terminated, a creditor or stockholder may apply to the supreme judicial court, which may appoint one or more trustees to take charge of its estate and effects, with power to collect its debts, and prosecute and defend suits at law, and to sell and convey its real estate, and, if sold at auction.

the same notice shall be given as in the sale of lands of corporations on execution. The court has jurisdiction in equity of all proceedings therein, and may make such orders and decrees, and issue such injunctions, as are necessary : Me. 46,25.

Except where otherwise provided by statute, whenever, at any meeting of its stockholders legally called therefor, such stockholders vote to dissolve such corporation, a bill in equity against the same for dissolution thereof may be filed by any officer, stockholder, or creditor in the supreme judicial court, in the county in which it has an established place of business, or in which it held its last stockholders' meeting, upon which bill such notice shall be given as may be ordered by any justice of said court, in term time or vacation, upon proof of which notice such proceedings may be had, according to the usual course of suits in equity, that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation, and no existing assets thereof requiring distribution among the stockholders, said court may dissolve said corporation without the appointment of trustees or receivers : Me. 46,27.

Said court has jurisdiction in said cause to appoint receivers, issue injunctions, and pass interlocutory decrees and orders, according to the usual course of proceedings in equity ; and shall, moreover, upon dissolving said corporation, or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by sections 24, 25 (§ 8332), 26, and 47 (§ 8162), or by any other law of the state, with such special powers as may be given them by said court ; but notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation, and may retain said bill for that purpose : Me. 46,28.

Nothing in the two preceding sections relieves any officer, shareholder, or other person from any liability, except as provided therein : Me. 46,29.

But such court of chancery shall, upon application, require and order ample security to protect the rights of parties interested before such extension is made or a receiver appointed. Notice of the application shall be given by publication in a newspaper at least two weeks before the time set for hearing the same : Vt. 3273.

Whenever any corporation is insolvent, or whenever, by reason of the fraud, negligence, misconduct, or continued absence from the state of the executive officers of any corporation whose stockholders have neglected, refused, or omitted for an unreasonable time to hold meetings or attend to its concerns, the estate and effects of such corporation are being misapplied, or are in danger of being wasted or lost, or whenever any corporation has done or omitted to do any act which act or omission is ground for the forfeiture of its charter at law, the supreme court may, upon the petition of any stockholder or creditor of such corporation, and upon such reasonable notice as the court may prescribe, decree a dissolution of such corporation, and appoint a receiver of its estate and effects, or may appoint such receiver without decreeing a dissolution : R.I. 1888,686,1.

When the stockholders of any corporation constituted under the laws of this state shall have voted to discontinue its business and distribute its capital stock among its stockholders, it may apply to the superior court " in the county where it is located, or to any judge of said court in vacation, for an order limiting a time for the creditors of said corporation to present their claims against it to its directors, and said court or judge may make such order, limiting not less than two months from its date, and shall prescribe the notice that shall be given thereof to said creditors ; and all claims not presented in pursuance of said order shall be barred of a recovery. And any claim presented, which shall be rejected by the directors, shall be barred unless the owner thereof shall commence an action to enforce the same within four months after he shall receive written notice of its rejection : Ct. 1913.

Whenever any joint stock corporation shall vote to wind up its affairs and dispose of

its property, the superior court in the county where such corporation is located may order the property to be sold at public auction upon the petition of the owners of one sixth of its stock, and notice of such public sale shall be given in such manner as said court shall order : Ct. 1966.

Whenever any corporation organized under the laws of this state shall be annulled and dissolved by an act of the legislature, it shall be the duty of the attorney-general immediately thereafter to bring a suit to wind up and finally settle and adjust the affairs of such annulled and dissolved corporation : N.Y. 1886,310,1.

Whenever, in the judgment of the board of directors of any corporation organized under this act, or incorporated under any law of this state, it shall be deemed advisable and most for the benefit of such corporation that the same should be dissolved before the expiration of the time limited in its certificate of incorporation, or in its charter, it shall and may be lawful for such board of directors, within ten days after the adoption of a resolution to that effect by a majority of the whole board, at any meeting called for that purpose, and of which meeting every director shall have received at least three days' notice, to cause written or printed notice of the adoption of such resolution to be mailed to each and every stockholder of such company residing in the United States, and also within said ten days cause a like notice to be published in one or more newspapers published and circulating in the county wherein such corporation shall have their principal office, and be conducting their business, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of such stockholders to be held at the office of such company in such county, to take action upon such resolution so adopted by the board of directors, and which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at any one time, of which adjourned meeting notice by advertisement in such paper shall be given ; and if at any such meeting two thirds in interest of all the stockholders shall consent that such dissolution shall take place, and signify such their consent in writing, then, and in such case, such company shall, upon filing such consent, duly attested by their secretary, within the office of the secretary of state, and receiving from him a certificate that such consent has been filed, be dissolved ; and the board of directors of such company shall cause such certificate to be published four weeks successively, at least once in each week, in one or more of the newspapers published and circulating in the county in which such company has been located and conducting its business ; and at the expiration of such time the said board shall proceed to settle up and adjust the business and affairs of such company in the same manner as though the same had been dissolved by the expiration of the time mentioned in their charter or certificate of incorporation ; *provided*, that the secretary of state shall not issue the certificate of dissolution hereinbefore mentioned until satisfied by due proof that the requirements aforesaid have been fully complied with by such corporation : N.J. Corps. 34 ; Del. V. 17,147, 21. A list of the names and residences of the then existing board of directors, with its officers, which list shall have been duly verified by the secretary or president of said board, shall be filed with him, and the secretary of state shall not issue the certificate of dissolution therein mentioned until such list shall have been filed as aforesaid : N.J. Supp. Corps. 37.

If not less than one third in interest of the stockholders of a corporation desire to wind up its affairs, they may apply by bill in chancery to the circuit court of the county in which the principal office or place of business of such corporation is situated, or if there be no such office or place of business in this state, to the circuit court of the county in which the other stockholders, or any one or more of them, reside or are found, or in which the property of such corporation or any part of it may be, setting forth in

the bill the grounds of their application; and the court may thereupon proceed according to the principles and usages of equity to hear the matter, and if sufficient cause therefor be shown to decree a dissolution of the corporation, and make such orders and decrees and award such injunctions in the cause as justice and equity may require: W.Va. 53,57.

Public notice of such resolution shall be immediately given by advertisement in some newspaper of general circulation published near the principal office or place of business of the corporation, once a week for six weeks at least before any dividend of the capital shall be made: W.Va. 53,56.

Nothing in this chapter contained shall be construed to impair the jurisdiction of the court of chancery to decree the dissolution of any corporation, or to appoint a receiver or receivers, trustee or trustees, to settle the affairs of any corporation dissolved by lapse of time or otherwise, and all trustees or managers of any corporation, acting as the trustees of the stockholders and creditors thereof after the dissolution of the corporation, shall in all things be subject to the control of the court of chancery; may be required to give bond, with security to be approved by the court, upon petition of any stockholder or creditor of the corporation dissolved, conditioned for the due discharge of the trust; may be required to account for the proceeds of the property and effects of the corporation; and for any failure to give such bond or render such account, or for any default or neglect of duty, they, or any of them, may be removed by the court, and a successor or successors appointed: Wy. 653.

And not until its debts shall have been fully paid; notice of such meeting to vote dissolution to be given in the manner now or at the time provided by law for calling stockholders' meetings for the purpose of increasing or diminishing the capital stock of corporations, and when a dissolution has been so ordered, the president and secretary of such corporation shall make and sign notices of dissolution, one copy of which shall be filed in the office of the secretary of the territory, and one copy shall also be filed in the office of the county clerk in every county in which the articles of incorporation of such corporation were filed, and a copy of such notice shall be published in some newspaper printed in each of said counties for the period of at least six weeks, and upon the filing and publication of such notices as aforesaid, such corporation shall be deemed to have been dissolved forever: Wy. 654.

Whenever any corporation formed under the laws of Wyoming shall expire by limitation of law, or by the terms of its articles of incorporation, notices of such expiration shall be made and filed, and publication made in the same manner as is hereinbefore required: Wy. 655.

A majority of the stockholders owning three fourths of the stock may file a petition in the chancery court for dissolution: Ala. 1683.

After notice of subpoena to all stockholders not joining, and by advertisement to parties out of the state, if it appear to the chancellor that a majority of the stockholders still wish to dissolve, he shall so decree, and appoint a receiver: Ala. 1684 6.

Any party dissatisfied with the decree of dissolution may appeal, giving bond and sureties as prescribed by the chancellor or register: Miss. 1689.

NOTE. — <sup>a</sup>The chancellor or court of chancery: Vt., N.J., Del., Ala.; the superior court: Ct., Ind., N.C., Minn., Mont.; the district court: Dak., Oka.

§ 8333. **Procedure.** The court shall have jurisdiction in equity (in states having distinct equity jurisdiction) of the application and of all questions arising in the proceedings thereon; and may make such orders, injunctions, and decrees therein as justice and equity require: Mass. 105,43; Vt. 3274; N.J. Corps. 61; Ind. 3013; Minn. 3139; Del. V. 17,147,36; N.C. 669; Uta. 2275; Wy. 653.



The same period of newspaper publication must precede any such premature dissolution of a corporation as is required at its creation : Io. 1067 ; Ky. 56,8 ; Ariz. 239.

So, notice of dissolution must be filed and published, as the articles in § 8024 : Col.

The copy of the resolution of dissolution or decree, duly certified and sealed with the stock vote thereof, must be recorded like an amendment to the articles, and a like copy filed with the secretary of state : Pa. Corps. 90 ; Wis. 1789.

It must be certified to the secretary of state, and duly recorded by him : W.Va. 53,56.

The secretary of state must deliver a copy to the clerk of the house, to be bound with the acts of the legislature : W.Va.

**§ 8334. Sales in Fraud of Creditors.** All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, including things in action, of every such corporation, made after the filing of the petition for a dissolution thereof, in payment of or as a security for any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receivers who may be appointed on such petition, and as against the creditors of such corporation : N.Y. 3,8,3,71; O. 5661 ; Mich. 8187 ; Md. 23,270.

Whenever any incorporated company shall have refused the payment of any of its notes, or other evidences of debt, in specie or lawful money of the United States, it shall not be lawful for such company, or any of its officers, to assign or transfer any of the property or choses in action of such company to any officer or stockholder of such company, directly or indirectly, for the payment of any debt ; and it shall not be lawful to make any transfer or assignment of property or stock in contemplation of the insolvency of such company to any person or persons whatever ; and every such transfer or assignment to such officer, stockholder, or other person, or in trust for them or for their benefit, shall be utterly void : N.Y. 1890,564,48.

If any such company create any lien or encumbrance on its works or property for the purpose of giving a preference to one or more creditors of the company over any other creditor or creditors, except to secure a debt contracted or money borrowed at the time of the creation of the lien or encumbrance, the same shall inure to the benefit ratably of all the creditors of the company existing at the time such lien or encumbrance was created : Va. 1149.

**§ 8335. Receiver.** Upon decree of dissolution, such court is required to appoint a receiver : Ala. 1686 ; Mich. 8181 ; Md. 23,268. So probably in all states ; and see Art. 836.

**§ 8336. Winding up.** (See also Art. 835.) All property belonging to such corporation at the time of the dissolution shall, by the trustees or directors of such corporation, be converted into cash, and distributed *pro rata* among the stockholders of the said corporation ; said distribution to take place within six (6) months from the time of converting said property into cash : Col. 1891, p. 95.

If there be no person entitled to receive the same, or any part thereof, it shall be paid into the state treasury, to be disposed of in such manner as the general assembly may direct : Ind. 3015.

**§ 8337. Creditors' Rights.** (See also § 8334.) As soon as practicable after such resolution is passed, the stockholders shall cause ample funds and assets to be set apart, either in the hands of the trustees or otherwise, to secure the payment of all debts and liabilities of the corporation ; and any creditor who supposes his claim not to be sufficiently secured thereby, whether such claim be then due or thereafter to become due, may, on

bill in chancery, if sufficient cause therefor be shown, obtain an injunction to prevent the distribution of the capital, and a decree against any stockholder for the amount of the capital received by him ; and if necessary or proper in the case, the court may appoint a receiver to take charge of and administer the property and assets of the corporation : W.Va. 53,56.

If any claim is contested, it must be filed by the claimant in the court, and the genuineness thereof ascertained as in other contested claims in chancery : Ala. 1688.

**Art. 834. Involuntary Dissolution.** (And compare § 8332.)

§ 8340. **Method.** It is effected (1) by judgment in a court of competent jurisdiction : Kan. 23,40 ; Tex. 604.

(2) " Courts of equity have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor : " Ill. 32,25 ; Col. 258.

The writs of *scire facias* and of *quo warranto* are abolished : Ore. 354 ; Mon. C. C. P. 410.

So of *scire facias* only : Ida. 4611. And so in other states an action at law has replaced *quo warranto*.

§ 8341. **Dissolution by Forfeiture.** Compare §§ 8036, 8037, 8330, 8332.) A corporation is deemed to have surrendered or lost its rights and franchises, and to be dissolved by lapse, or an action for dissolution may be brought in the following cases : (A) when it has (1) remained insolvent for one year : N.Y. Civ. P. 1785 ; Mich. 8155 ; Wis. 1763 ; Minn. 5661.

When insolvent ; no time is specified : Md. 23,264 ; R.I. 1888,686.

" For insolvency, evidenced by a return of *no property found* upon execution : " La.D. 688.

(2) Or neglected or refused to pay its notes or other evidences of debt for one year : N.Y., Mich., Minn., Wis.

(3) When unable to meet its liabilities : N.Y.‡ ; Io. 1074.

(4) When fraud has been committed under Art. 823 : Io. ; Neb. 16,142.

(5) When a judgment against any corporation other than banking shall have remained unpaid for one year after rendition, and no stay by appeal or superseas : Ind. 3016.

(B) When it has suspended its ordinary business for a year : N.Y., Wis., Minn., Kan. 23,40. (Compare § 8037.)

When it has not used its franchise for two years : Io. 1079.

Neglected for an unreasonable time to hold meetings, or attend to its concerns : R.I. 1888,686,1.

When it has failed to commence active operations within three years after filing its charter : Tex. 605.

(C) When it has violated any provision of the act under which it was incorporated : N.Y.‡ Civ. P. 1785.

A corporation may forfeit its charter, 1st, by a wilful violation of any of the essential conditions on which it is granted ; 2d, by a misuser or non-user of its franchises. This dissolution dates from the judgment of a court of competent jurisdiction declaring the forfeiture : Ga. 1685 ; Pa. Corps. 88. (Compare § 8330.)

The superior court in the county in which any corporation, organized under the laws of this state, has its principal place of business, may, as a court of equity, on the application of any of its stockholders, wind up its affairs and dissolve it, if said court shall find that said corporation has voted to wind up its affairs, or abandoned the business for which it was organized, and has thereafter neglected within a reasonable time or in a

proper manner to wind up its affairs and distribute its effects among its stockholders ; and for this purpose may, if it deem it necessary, appoint one or more receivers of the estate of said corporation, and limit a time for its creditors to present their claims to such receivers, and direct public notice thereof to be given ; and all claims not presented within such time shall be barred. Said receivers shall allow all just claims against said corporation, collect its debts, sell its property, and convert the same into money, and report their doings to said court as it may direct. Said court may, on complaint of any person aggrieved by such doings, grant such relief as the nature of the case may require ; and it may make such orders as to the doings of the receivers, their compensation, and other expenses, and as to the payment of debts and distribution of the effects of said corporation, as may be just and conformable to law : Ct. 1942.

The superior court in any county where any such corporation is located may wind up its affairs and decree its dissolution, or grant any other suitable relief in equity, on the petition of its stockholders representing one third of its stock, upon sufficient cause being shown, and may proceed in the manner provided in respect to the dissolution of corporations ; *provided*, that no limitation for the presenting of claims of creditors shall be less than four months, and the person or persons acting as receiver or receivers shall be required to send a copy of the notice of limitation to every known creditor of such corporation : Ct. 1965 ; 1889,222.

When any joint stock corporation shall have failed for two successive years to make the annual statement by this chapter, or any act in amendment thereof, it shall be the duty of the attorney for the state in the county where such corporation is located, upon the request of any stockholder or creditor, or upon his own motion whenever he shall be of opinion that the public good requires such action, to apply to the superior court in said county for a dissolution thereof, which court, after due notice to all parties interested, may proceed to hear the matter, and for reasonable cause decree a dissolution of the corporation, and proceed in the manner provided by [§ 1965 above]. But if it shall appear upon the hearing that the corporation is solvent, the court may limit a time within which such corporation shall file a statement of its condition, as prescribed by this chapter, and said order having been complied with, the court may dismiss such application, and tax the costs thereof against such corporation : Ct. 1967.

Whenever any incorporated company in this state shall become insolvent, it shall be the duty of the directors or managers thereof, within ten days thereafter, to call a public meeting of the stockholders, and to lay before them for inspection and examination all the books of accounts, by-laws, and minutes of the said corporation, and to exhibit to the said meeting a full and true statement of all the estate, funds, and property of the said company, and of all the debts due and owing to the said company, and by whom, and of all the debts owing by the said company, and to whom, as far as the said directors and managers can at that time make out the same ; so as to exhibit to the stockholders a full, fair, and true account of the situation of the affairs of the said company : N.J. Corps. 69.

All corporations formed under this chapter may be dissolved by special proceeding, instituted by the company, or by any corporator, or by any judgment creditor whose execution issued to the county in which the corporation has its only or principal place of business shall be returned unsatisfied, or by the authority of the attorney-general in the name of the state, for the causes hereinafter mentioned, to wit :—

(1) For any abuse of its powers to the injury of the public, or of the corporators, or of its creditors or debtors ;

(2) For non-user of its powers for two years or more consecutively ;

(3) For insolvency manifested by the return of an execution unsatisfied upon a judgment against the company, docketed in the superior court of the county where it has its only or principal place of business ;

(4) Upon any conviction of the company of a criminal offence, if such offence be persistent: N.C. 694.

Notice of such proceedings must be served on the principal officer of a corporation like a writ of summons, and on the corporators, creditors, and others interested by publication weekly for three weeks in a newspaper in the county of the principal place of business, or, if no such newspaper, by posting at the court-house door, and publication in the paper nearest the county seat or in a Raleigh newspaper: N.C. 695.

If the amendments proposed to the articles (see § 8090), being not merely auxiliary but fundamental, are rejected by a vote of more than one half the stock, the corporation is wound up: Tenn. 1711.

And any corporation offending against any of these provisions (i. e. holding property above the legal limit, or acting *ultra vires*) shall forfeit its charter, and shall also forfeit all property, real and personal, above the amount it may lawfully hold, to the state: Miss. 1032. See §§ 8204, 8215.

Failure to comply substantially with the foregoing requisitions with reference to organization and publicity, diversion of funds, or payment of illegal dividends, shall cause a forfeiture of all powers and privileges conferred, and a court of equity shall, upon bill filed, proceed to close the corporation: Fla. 34,38. Compare § 8028.

NOTE. — "It is dissolved so far as to enable creditors to sue the stockholders on their individual liability.

§ 8342. **Quo Warranto.** (See also in Part IV., Vol. III.) (A) An action may be brought in the name of the state against the party offending in the following cases: —

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state: O. 6760; Ind. 1131; Ill. 112,1; Mich. 8635; Wis. 3466; Io. 3345; Minn. 5333; Kan. 4767; Neb. 2,704; N.C. 607; Tenn. 4146; Tex. 4098i; Cal. 10803; Ore. 357; Nev. 3342,3711; Wash. 702; Dak. C. C. P. 534; Ida. 4612; Mon. C. C. P. 411; Wy. 3092; Uta. 3529; Ala. 3170; Miss. 2587; Ariz. 3191.

2. When any public officer, civil or military, has done or suffered an act by which, under the law, he forfeits his office: O., Ind., Mich., Wis., Io., Minn., Kan., Neb., N.C., Tenn., Ore., Nev., Wash., Dak., Wy., Ala.

3. When any association, or number of persons, act within this state as a corporation, without being duly incorporated: O.; Ind.; Ill.; Mich.; Wis.; Io.; Minn.; Kan.; Neb.; N.C.; Tenn.; Tex.; Ore.; Nev.; Wash.; Dak.; Wy.; Ala.; Miss. 2586.

4. When any individuals exercise corporate rights, privileges, or franchises not granted to them by any law: Ind.; Neb.; Md. 23,263; Tenn.; Tex.; Nev.; Wash.; Mon.

5. Upon instruction of the legislature (of the governor: Ore.), when a charter or renewal of one has been obtained by fraud, etc.: N.Y. Civ. P. 1797; Minn. 5331; N.C. 604; Ore. 355.

(B) An action may be brought in the name of the state, on the information of any person (and on leave of the court: N.Y., Mich., Ore.), for the purpose of vacating the charter, or annulling the existence of any corporation other than municipal, whenever such corporation, —

1. Offends against any of the acts creating, altering, or renewing such corporation: N.Y.; O.; Mich.; Wis.; Minn.; Md.; N.C.; Ore.; Dak.; Wy.; Ala.; Miss. 2585.

2. Violates the provisions of any law by which such corporation forfeits its charter by abuse of its powers: R.I., N.Y., Mich., Wis., Io., Minn., Kan., Md., N.C., Ore., Dak., Wy., Ala.

3. Has forfeited its privileges or franchises by failure to exercise its powers: N.Y., Mich., Wis., Io., Minn., Kan., Md., N.C., Ore., Dak., Wy., Ala., Miss.

4. Has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises: R.I.; N.Y.; O.; Ind.; Ill.; Mich.; Wis.; Io.; Minn.; Md.; N.C.; Tenn. 4146, 4162; Tex. 4098i; Ore.; Nev. 3711; Dak. C. C. P. 532; Wash. 702; Wy. 3093; Ala.

5. Exercises a franchise or privilege not conferred on it by law: Mass. 1866, 17; R.I. 1888, 686, 1; N.Y. Civ. P. 1798; O.; Ind.; Ill.; Mich.; Wis. 3241; Io. 4581; Minn. 5332; Kan. 4767; Md. 23, 263; N.C. 605; Ore. 356; Nev.; Dak.; Wash.; Wy.; Ala. 3167.

6. For "misuse, non-use, or abuse of its corporate powers and franchise:" O. 6761; Md. 23, 255; Miss.

7. For non-user for two years consecutively: N.C.

8. For insolvency, shown by an execution returned unsatisfied: N.C.

9. "When any corporation claims, by virtue of a congressional grant, any public or Indian lands" in the state: Kan. 4767.

10. "For any cause under which a remedy in *quo warranto* previously existed:" Kan.

In all proceedings in law or equity in which it is alleged that the rights of individuals, or of franchises of other corporations, are injured by any corporation claiming a right or franchise, the court shall inquire and ascertain whether such corporation does in fact possess such right or franchise, and if not restrain it by injunction; and if the proceedings be at law, for damages, it shall be lawful therein to recover damages for such injury, as in other cases: Pa. Corps. 108.

The court has power to restrain by injunction any corporation from assuming or exercising any franchise, liberty, or privilege, or transacting any business, not authorized by the act by or under which such corporation was created, and to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law: Minn. 5559; N.C. 686.

At suit of the attorney-general: N.C.

It shall be the duty of the attorney-general to bring an action in the superior court of the county, as in this code directed, to restrain by injunction any corporation from assuming or exercising any franchise, or transacting any business, not allowed by its charter; to restrain any person from exercising corporate franchises not granted; to bring directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care; to remove such officers or trustees upon proof of gross misconduct; to secure, for the benefit of all interested, the property or funds aforesaid; to set aside and restrain improper alienations thereof; and generally to compel the faithful performance of duty, and prevent all malversation, peculation, and waste. And in case of fraud by the president, directors, managers, or stockholders in any corporation, the court shall render personally liable to creditors and others injured thereby such of the directors and stockholders as may have been concerned in the fraud: N.C. 686.

**§ 8343. Process of Involuntary Dissolution.** (Compare §§ 8332, 8333.) When a corporation is dissolved by the supreme judicial court, the clerk of the courts for the county in which the decree or order for dissolution is made shall forthwith make return

thereof to the secretary of the commonwealth, giving the name of the corporation dissolved, and the date upon which such order or decree was made : Mass. 105,45.

Whenever a judgment shall be obtained against any corporation incorporated under the laws of this state, and an execution issued thereon shall have been returned unsatisfied in whole or in part, upon the petition of or by an action commenced by the person obtaining such judgment, or his representatives, the proper court within the proper county may sequester the stock, property, things in action, and effects of such corporation, and may appoint a receiver of the same : N.Y. Civ. P. 1784 ; Wis. 3216.

If the attorney-general intervene, in *quo warranto*, he may demand judgment of fine and forfeiture of the corporate franchise ; otherwise, the judgment is merely for ouster from the privilege claimed : Mass. 186,22,23.

An action, specified in the last section, may be maintained by the attorney-general in the name and in behalf of the people ; and whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits for sixty days after this submission to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly : N.Y. Civ. P. 1786.

In an action brought as prescribed in this article, the court may grant an injunction order restraining the corporation and its trustees, directors, managers, and other officers from collecting or receiving any debt or demand, and from paying out or in any way transferring or delivering to any person any money, property, or effects of the corporation during the pendency of the action, except by express permission of the court : N.Y. Civ. P. 1787.

Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation and its trustees, directors, managers, and other officers from exercising any of its corporate rights, privileges, or franchises during the pendency of the action, except by express permission of the court : N.Y. Civ. P. 1787.

Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons so made liable may be made parties defendant : N.Y. Civ. P. 1790.

Where they are not made parties defendant, the plaintiff in the action may maintain a separate action against them to procure a judgment, declaring, apportioning, and enforcing their liability : N.Y. Civ. P. 1791.

In an action brought as prescribed in this article, an injunction order may be granted, at any stage of the action, restraining the corporation, and any or all of its directors, trustees, and other officers, from exercising any of its corporate rights, privileges, or franchises ; or from exercising certain of its corporate rights, privileges, or franchises, specified in the injunction order ; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law : N.Y. Civ. P. 1802.

In an action brought as prescribed in article second, third, or fourth of this title (i. e. this chapter), a stockholder, officer, alienee, or agent of a corporation is not excused from answering a question relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offence, or to subject him to a penalty or forfeiture. But his testimony shall not be used as evidence against him in a criminal action or special proceeding : N.Y. Civ. P. 1805.

In such an action, the court may, at any stage of the action before or after final judgment, make an order requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner

and in such a reasonable time, not less than six months from the first publication of notice of the order, as the court directs; and that the creditors who make default in so doing shall be precluded from all benefit of the judgment, and from any distribution which may be made thereunder, except as hereinafter provided. Notwithstanding such order, any such creditor who shall exhibit and prove his claim in the manner directed thereby, with proof, by affidavit or otherwise, that he has had no notice or knowledge thereof in time to comply therewith, any time before an order is made directing a final distribution of the assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order: N.Y. Civ. P. 1807.

In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director, or trustee of the corporation applies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring the action, or apply for leave to bring it, if he has good reason to believe that it can be maintained: N.Y. Civ. P. 1808.

An injunction order suspending the general and ordinary business of a corporation, or of a joint stock association, consisting of seven or more persons, or suspending from office or restraining from the performance of his duties a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application therefor, to the proper officer of the corporation or association, or to the trustee, director, or other officer enjoined. If such an injunction order is made otherwise than as prescribed in this section, it is void: N.Y. Civ. P. 1809.

"For all other purposes the chancellor may at any time, by order, in such suit or proceeding, with or without notice to any one, and without any further proceedings or judgment, declare the charter of said corporation forfeited and void:" N.J. Supp. Corps. 79.

Nothing in this act contained relating to insolvent corporations shall apply to any incorporated literary or religious society, or any corporation not formed for purposes of gain, or destroy or impair any right or remedy already existing against any incorporated company: N.J. Corps. 86.

In all cases in which heretofore any privileges or immunities have been granted to any corporation, by any act of the general assembly of the commonwealth, upon terms and conditions in such act prescribed, for the knowing and intentional neglect or refusal to perform and comply with which terms and conditions a forfeiture or determination of such privileges or immunities is provided for in the act, it shall be the duty of the attorney-general of the commonwealth, upon complaint made to him by any party whose rights or interests are affected by such neglect or refusal, to institute forthwith proceedings in a court of competent jurisdiction to ascertain the fact of such neglect or refusal; and if such neglect or refusal shall be adjudged by such court to have occurred, then and in such case all the rights, privileges, powers, and immunities granted to said corporation upon such terms and conditions shall forthwith cease and determine: Pa. Corps. 88.

The circuit court of the proper county has power to declare the franchise forfeited, and appoint a receiver: Ind. 3016.

And it is hereby made the duty of the attorney-general to make complaint in the district court in any county in which such company or corporation may be doing business: Minn. 5561; Md. 23,255.

Or the district attorney: Md.

If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter has, by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corpo-

ration be dissolved: O. 6760; Ind. 1141; Mich. 8657; Io. 4592; Kan. 4772; Minn. 5340; Neb. 2,715; Wash. 711; Ala. 3179; Oka. 5357.

Otherwise, it is merely ousted from the power complained of: O.; Io. 4593; Minn. 5339; Neb. 2,716.

§ 8344. **Rights of Creditors, etc.** In such an action, the court may in its discretion, on the application of either party, at any stage of the action before or after final judgment, and with or without security, grant an injunction order restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings: N.Y. Civ. P. 1806.

Whenever any incorporated company shall have become insolvent or shall suspend its ordinary business for want of funds to carry on the same, it shall and may be lawful for any creditor or stockholder to apply, by petition or bill of complaint, to the chancellor, setting forth the facts and circumstances of the case, for a writ of injunction, and the appointment of a receiver or receivers, or trustees; whereupon the chancellor, being satisfied of the sufficiency of said application and also of the truth of the facts and allegations contained in the said petition or bill, by affidavit or otherwise, and upon giving, when so ordered, such reasonable notice, to be served or published as the chancellor in an order to be made for that purpose shall direct, the chancellor may proceed in a summary way to hear the affidavits, proofs, and allegations which may be offered by or on behalf of the parties; and if upon such inquiry into the matters or cause of complaint it shall be made to appear to the chancellor that the said company has become insolvent, and shall not be about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it shall and may be lawful for the chancellor to issue an injunction to restrain the said company and its officers and agents from exercising any of the privileges or franchises granted by its certificate, or by the act incorporating the said company, and for collecting or receiving any debts, or from paying out, selling, assigning, or transferring any of the estate, moneys, funds, lands, tenements, or effects of the said company until the court shall otherwise order: N.J. Corps. 70.

That whenever two or more of the directors, or the cashier, of any banking company shall admit that the said bank is insolvent or unable to pay its debts, and the said bank shall neglect or refuse to pay its just debts when demanded within the usual and proper hours of business, or whenever such banking company shall have stopped payment, by neglecting or refusing to redeem their bills, notes, or other evidences of debt in specie, or in the notes of some other incorporated bank current at the time in this state at par value, for want of funds, or shall have closed its doors during banking hours, or taken any other measures with intent to prevent the creditors of the said bank from demanding payment of their just debts, or from presenting the notes or bills of the said bank for redemption as aforesaid, or shall have suspended the ordinary business of the said bank for want of funds to carry on the same, the said banking company shall from the time thereof be deemed and considered insolvent within the true intent and meaning of this act: N.J. Corps. 71.

When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby: Neb. 2,726; Wy. 3122.

The several courts of common pleas of this commonwealth shall have and exercise all the powers of a court of chancery in all cases of or for enforcing rights under mortgages of the property or franchises of any coal, iron, steel, lumber, or oil, or any mining, manufacturing, or transportation corporation, where such property or franchise, or any part thereof, shall be situate or exercisable within the limits of this commonwealth, or belonging to or be exercisable by any domestic corporation, or any foreign corporation under permission granted by the laws of this commonwealth: Pa. Equity, 34.



§ 8345. **Receivers.** (See Art. 836.) In such cases (§§ 8335, 8341, 8342) the court of the proper county has power to declare its franchise forfeited, and appoint a receiver ("trustees," O., Wy.; "commissioner," Ia.): N.Y. Civ. P. 1801; O. 6781; Ind. 1142; Mich. 8659; Minn. 5341; Wis. 3216; Md. 23,258; N.C. 617, 619; Tenn. 4163; Nev. 3726; Wash. 711-2; Dak. C. C. P. 545; Wy. 3113; Miss. 2599; La. D. 688; Oka. 993.

At instance of any creditor: La.

Of any two creditors or stockholders: Miss.

Such receiver shall give bond, and reduce the assets to possession, and pay the debts (under the rules prescribed for administrators: Ind.): O.; Ind.; Io. 4597, 4599; Neb. 2,720,722; Nev. 3727-9.

In such an action the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver so appointed before final judgment is a temporary receiver until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands, and other property of the corporation; to preserve the property and the proceeds of the debts and demands collected; to sell, or otherwise dispose of, the property as directed by the court; to collect, receive, and preserve the proceeds thereof; and to maintain any action or special proceeding for either of these purposes. He must qualify as prescribed by law for the qualification of a permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof. A receiver appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred, and is subject to all the duties and liabilities imposed, upon a receiver appointed [*sic*] the voluntary dissolution of a corporation: N.Y. Civ. P. 1788.

It shall and may be lawful for the court of chancery, if the circumstances of the case and the ends of justice require it, at the time of ordering the said injunction, or at any other time afterwards during the continuance of the said injunction, to appoint a receiver or receivers, or trustee or trustees, with full power and authority to demand, sue for, collect, receive, and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills and notes, and property of every description belonging to the said company at the time of their insolvency or suspension of business as aforesaid; and to sell, convey, or assign all the said real or personal estate; and to pay into the court of chancery all the moneys and securities for money arising from such sales, or which the said receiver or receivers, or trustee or trustees, shall collect or receive by virtue of the authority vested in them, to be disposed of by the said receiver or receivers, or trustee or trustees, from time to time, under the order of the said court, among the creditors of the said company; first making to the receiver or receivers, or trustee or trustees, such reasonable compensation as the chancellor may deem just and proper, and also deducting the costs of the proceedings in the said court: N.J. Corps. 72.

Before the said receiver or receivers, or trustee or trustees, shall be capable of acting, he or they shall comply with such terms as the chancellor in his order appointing him or them may prescribe, and he or they shall respectively take and subscribe the following oath or affirmation before one of the masters of the court of chancery, or before the chancellor: "I, ———, do swear (or affirm) that I will faithfully, honestly, and impartially execute the powers and trusts reposed in me as receiver or trustee (as the case may be) for the creditors and stockholders of the ———, and that without favor or affection," which oath or affirmation shall be filed in the office of the clerk in chancery within ten days after the taking thereof: N.J. Corps. 73.

It shall and may be lawful for the receiver or receivers, or trustee or trustees, in order to enable them to ascertain and secure the property and effects of the company for which he or they shall be appointed as aforesaid, to send for persons and papers, and to examine the said persons, and the president, directors, managers, cashier, and all other officers and agents of the said company, on oath or affirmation (which oath or affirmation the said receiver or receivers, or trustee or trustees, are hereby empowered to administer), respecting the affairs and transactions of the said company, and the estate, money, goods, chattels, credits, notes, bills, and choses in action, real and personal estate, and effects of every kind of the said company; and if any such person shall refuse to be sworn or affirmed, and to make answer to such questions as shall be put to him, or shall refuse to declare the whole truth touching the subject matter of the said examination, then it shall be lawful for the chancellor, on report made to him by the said receiver or receivers, or trustee or trustees, to commit such person to prison, there to remain until he shall submit himself to be examined as aforesaid, and shall pay all the costs of such proceedings against him: N.J. Corps. 74.

It shall be lawful for said receiver or receivers, or trustee or trustees, with the assistance of a peace officer, to break open, in the daytime, the houses, shops, warehouses, doors, trunks, chests, or other places of said company for which he or they shall be appointed receiver or receivers or trustee or trustees as aforesaid, where any of the said company's goods, chattels, choses in action, notes, bills, moneys, books, papers, or other writings or effects have been usually kept, or shall be, and to take possession of the same, and also to take possession of the lands and tenements belonging to said corporation: N.J. Corps. 75.

It shall be the duty of the receiver or receivers, or trustee or trustees, so to be appointed, as soon as they conveniently can, after taking possession of the estate and effects of the company for which he or they shall be appointed as aforesaid, to lay before the court of chancery a full and complete inventory of all the estate, property, and effects of the said company, its nature and probable value, and an account of all the debts due from the said company, and of the debts due to it, as near as the said receiver or receivers, or trustee or trustees, can ascertain the same at that time; and also to make a report of their proceedings to the said court every six months thereafter, until the said trust shall be completed: N.J. Corps. 76.

The receiver or receivers, or trustee or trustees, so to be appointed shall be deemed and taken to be a receiver or receivers, or trustee or trustees, for the creditors and stockholders of the company for which they shall be appointed, with full power and authority, whenever they shall deem it proper, to institute suits at law or in equity, in his or their own name or names, as receiver or receivers, or trustee or trustees, as aforesaid, for the recovery of any estate, real or personal, debts, rights in action, damages, and demands whatsoever and wheresoever existing in favor of the said company at the time of the insolvency or suspension of business, as aforesaid, of the said company, or accruing subsequent thereto: and with power and authority, in their discretion, to compound and settle with any debtor of the said company, or with persons having possession of their property, or in any way responsible in law or equity to the said company at the time of its insolvency or suspension of business as aforesaid, upon such terms and in such manner as the said receiver or receivers, or trustee or trustees, shall deem just and beneficial, under all the circumstances, to the persons interested in the funds and property of the said corporation; and in case of mutual dealing between the said corporation and any other person or persons, to allow just set-offs in favor of such persons in all cases in which it shall appear to the said receiver or receivers, or trustee or trustees, that the same ought to be allowed according to law and equity; *provided*, that where a debtor shall have paid *bona fide* his debt to the said company without notice that the said company had become insolvent or had suspended its business as aforesaid, he, she, or they shall not be liable to pay the same to the receiver or receivers, or trustee or trustees: N.J. Corps. 77.

Any creditor who shall lay his claim before the receiver or receivers, or trustee or trustees, appointed in pursuance of this act, may, at the same time, declare his desire that a jury may decide thereon; and in like manner the said receiver or receivers, or trustee or trustees, may require that the same shall be referred to a jury; and in either case such request shall be entered on the minutes of the said receiver or receivers, or trustee or trustees, and thereupon an issue shall be made up between the parties, under the direction of one of the justices of the supreme court, and a jury impanelled, as in other cases, to try the same at the circuit court next to be holden in the county in which the said company carried on their business; the verdict of such jury shall be subject to the control of the supreme court, as in suits originally instituted in the said court, and when rendered, if not set aside by the court, shall be certified by the clerk of the supreme court to the said receiver or receivers, or trustee or trustees; and such creditor or creditors shall be considered in all respects as having proved their debts for the amounts so ascertained to be due to them: N.J. Corps. 78.

Every matter and thing by this act required to be done by the receiver or receivers, or trustee or trustees, of any such incorporated company shall be good and effectual, to all intents and purposes, if performed by a majority of them; and it shall and may be lawful for the court of chancery to remove any receiver or receivers, or trustee or trustees, so to be appointed, and to appoint another or others in his or their place or places to fill any vacancy or vacancies which may occur as the said court may deem expedient and proper: N.J. Corps. 79.

If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders: Io. 4596; Neb. 2,719.

When the charter of any corporation is forfeited by decree of court, the district attorney shall forthwith inform the governor of the state, who shall thereupon appoint a liquidator to liquidate the affairs of the corporation as in case of insolvency of individuals. If the person appointed refuse to act, he must appoint the district attorney: La. D. 731.

See also Art. 836.

**§ 8346. Winding Up.** In the final order in any such action, the court shall direct a just and fair distribution of the property of such corporation and of the proceeds thereof to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in cases of voluntary dissolution: N.Y. Civ. P. 1793, 1801; Wis. 3217.

That whensoever it has occurred or shall happen that any corporation has been or shall be dissolved, whether by decree of court, expiration of time, or otherwise, owning land or other real estate within this commonwealth, it shall and may be lawful for the court of common pleas of the county wherein the real estate is, or shall be located, upon the petition of any one or more of the shareholders or corporators, or their legal representatives, and personal notice to and service upon all known parties in interest whose places of residence are known, and such further notice by advertisement to others interested as the court may direct, if no reasonable and sufficient cause be shown to the contrary, to authorize the sale of such real estate, in fee simple, at either public or private sale, upon such terms as the court may designate, by a trustee to be appointed for that purpose: Pa. 1891,9.

The settlement of the affairs of such corporation so dissolved shall be managed "as prescribed in cases of voluntary dissolution:" Fla. 34,26.

## **Art. 835. Consequences of Dissolution.**

**§ 8350. General Effect.** That the charter of no corporation shall be forfeited and void, notwithstanding the injunction and appointment mentioned in section eighty-three

of the act to which this is a supplement, shall have continued for four months ; provided said corporation shall have been heretofore managed and doing business under an order of the court of chancery : N.J. Supp. Corps. 80.

If any corporation shall expire or cease to exist, either by its own limitation, judicial judgment of forfeiture of charter, or by legislative act, the common law in relation to corporations shall not be in force in relation thereto, but the goods and chattels, lands, tenements, and hereditaments, and every right or profit issuing out of or appertaining thereto, moneys, credits, and effects of such corporation shall immediately vest in the state in trust for the uses and purposes by said charter contemplated ; and each, every, and all right, upon the expiration or dissolution of said corporation, shall be and is in abeyance until the action of the legislature shall be had thereon, unless provisions shall be made by law for the management of said corporation fund in contemplation of such dissolution : Ark. 1035.

A corporation once dissolved can be revived only by the same power by which it could be created : Dak. Civ. C. 422 ; Oka. 997.

**§ 8351. Division of Property.** (See also §§ 8334, 8346.) When a corporation is dissolved, its real and personal estate is vested in the persons who were at the time shareholders, as tenants in common according to their interests : Me. 46,54 ; N.J. Corps. 64 ; Del. V. 17,147,39 ; Miss. 1040.

It is vested in the directors as trustees under § 8355 : O. 5681 ; Col. 342 ; Wy. 648.

It is divided among the stockholders after paying all debts and liabilities of the corporation : R.I. 1888,686,3 ; W.Va. 53,56.

When a corporation owning real estate has dissolved for any cause, the officers last in office, or any trustee appointed by court on petition of the shareholders, may convey such real estate in fee, and distribute the proceeds as part of the effects of the corporation : Pa. Corps. 65 ; Neb. 1,16,65.

Upon a final judgment in any such action to restrain a corporation, or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its creditors : Minn. 5567.

**§ 8352. Rights and Remedies.** The dissolution of any corporation for any cause does not impair any remedy given against such corporation, its stockholders or officers, for any liabilities incurred previous thereto : Ill. 32,12 ; Md. 23,271 ; Col. 270 ; Ga. 1689 ; N.M. 225.

No suit abates ; but the directors, trustees, or receiver appointed may prosecute or defend it (see §§ 8375, 8380) : O. 5679 ; Mich. 8208 ; Neb. 1,16,63 ; Wy. 649 ; Md. 23,273 ; Del. V. 17,147,40.

So, debts due to or from the corporation are not extinguished : N.C. 687 ; Miss. 1040 ; Tenn. 4163 ; Dak. C. C. P. 545.

And the corporation may sue and be sued as before on existing debts and contracts : N.C. 698.

In any action pending against any corporation, if said corporation become dissolved, by the expiration of its charter or otherwise, before final judgment obtained therein, the said action shall not abate by reason thereof ; but the dissolution of said corporation being suggested, and the names of the trustees of said corporation being entered upon the record, the said action shall proceed to final judgment against the said trustees, by the name of the corporation : N.J. Corps. 65 ; O. 5679 ; Neb. 1,16,64.

In any action now depending or to be commenced in any court of record of this state, against any corporation now or heretofore existing, or that may be created hereafter, if said corporation become dissolved, by the expiration of its charter or otherwise, before final judgment obtained therein, the said action shall not abate by reason thereof ; but

the dissolution of said corporation being suggested, and the names of the trustees or other legal representatives of said corporation being entered upon the record, the same action shall proceed to final judgment against said trustees or other legal representatives by the name of the corporation : N.J. Corps. 92.

If any corporation, created under this or any general statute of this state, except railway or charitable or religious corporations, be dissolved, leaving debts unpaid, suits may be brought against any person or persons who were stockholders at the time of such dissolution without joining the corporation in such suit; and if judgment be rendered, and execution be satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from property of each stockholder respectively; and if any number of stockholders (defendants in the case) shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved : Kan. 23,44.

Any corporation dissolved may, notwithstanding such dissolution, prosecute an action at law in the corporate name, for the use of the person entitled to receive the proceeds of such suit, upon any cause of action accrued, or which but for such dissolution would have accrued to such corporation, and in the same manner and with like effect as if such corporation were not dissolved : O. 5683; Wy. 650.

And, conversely, it may be sued in the same way : O. 5684.

The lien of a judgment or execution at law, or a decree of a court of equity in favor of or against any corporation, shall not be dissolved or suspended by reason of the dissolution of such corporation, subsequent to the rendition of such judgment, or the entry of such decree, or the issuing of such execution; but execution may be had thereof in the same manner as if such dissolution had not occurred : O. 5680; Wy. 651.

So judgments rendered before or after dissolution may be revived : O. 5685.

No execution shall issue upon judgments at law, rendered against any corporation, subsequent to the dissolution of such corporation, but the same, with the costs thereof, shall be paid by the trustees as other debts : Wy. 652.

In the case of a dissolution of a corporation by any judgment or decree, the debts to or from it shall not be extinguished : N.C. 687.

**§ 8353. Order of Debts.** The residue of assets after charges, etc. of a dissolved or insolvent corporation are to be distributed in the following order: (1) all debts entitled to a preference under United States laws; (2) executions actually levied on the corporate property, according to their priority; (3) creditors having made special deposits, if such deposits remain in kind; (4) all other creditors *pro rata* : Mich. 8195.

When any corporation shall expire or be dissolved, or its corporate rights and privileges shall have ceased, all its works and property, and debts due to it, shall be subject to the payment of debts due by it, and then to distribution among the members, according to their respective interests : Va. 1103; W.Va. 53,59; N.C. 698; Ga. 1688.

“Under the direction of the directors, or of the receivers appointed :” W.Va.

Notice to or process against such corporation to answer in any suit or civil proceedings shall be sufficiently served by publication thereof once a week for four successive weeks in some newspaper published in the county or corporation wherein the suit or proceeding is, or, if there be no newspaper published in said county or corporation, in a newspaper published in some other county or corporation in the state : Va. 1103.

In payment of the creditors and distribution of the funds of any such company the creditors shall be paid proportionally to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the

purpose of preferring creditors ; and said creditors shall be entitled to such distribution on debts not due, making in such case a lawful rebate of interest, when interest is not accruing on the same ; and the surplus funds, if any, after payment of the creditors and the costs as aforesaid, and the preferred stockholders (subject to N.J. Corps. § 63, see below), may be divided and paid to the general stockholders proportionally, according to their respective shares : N.J. Corps. 80.

Provided, however, that the provisions of this section shall not be held or construed to in any way change, alter, or affect the provisions of section 63 [below].

In case of the insolvency of any corporation, the laborers in the employ thereof shall have a lien upon the assets thereof : N.J. Supp. Corps. 78.

In case of the insolvency of any corporation, the laborers in the employ thereof shall have a lien upon the assets thereof, for the amount of wages due to them respectively, which shall be paid prior to any other debt or debts of said company ; and the word "laborers" shall be construed to include all persons doing labor or service of whatever character, for or as workmen or employees in the regular employ of such corporation: N.J. Corps. 63 ; 1887,81 ; Del.V. 17,147,38.

Not exceeding one month's wages : Del.

If in any such action [§ 8342] it shall be adjudged that a corporation has forfeited its corporate rights, privileges, and franchises, judgment shall be rendered that such corporation be excluded from such corporate rights, privileges, and franchises, and be dissolved ; and thereupon the affairs of such corporation shall be wound up by and under the direction of a receiver, to be appointed by the court, and its property sold and converted into money ; and the proceeds, after paying the costs and expenses, shall be distributed in the following order : —

1. For the payment of taxes and debts due the United States, the state of Wisconsin, and any county, city, town, or village therein.

2. For the payment of the legal and equitable liens upon the property of such corporation, in the order of their priority.

3. For the payment of the other just debts of the corporation.

4. The residue of such moneys, if any, shall be distributed among the stockholders thereof.

When any corporation shall be adjudged to have exercised a franchise or privilege not conferred on it by law, the court may, in its discretion, instead of rendering a judgment as above provided in this section, render a judgment that such corporation be excluded from exercising such franchise or privilege, and that the plaintiff recover costs : Wis. 3245.

**§ 8354. Liability of Stockholders.** (Compare Art. 814.) In several states, if a corporation is dissolved, leaving debts unpaid, the stockholders may be sued individually, and the whole debt recovered ; and the stockholder paying it has contribution against the others : Kan.† 23,44 ; Mo. 2519 ; Tex. 608-9 ; Col. 258 ; Fla. 34,20.

But no stockholder is liable beyond the amount unpaid on his stock : Tex. 610 ; Col. See also § 8140.

Or also when the corporation does an act subjecting it to forfeiture : Col.

Or allows any execution or decree to remain unpaid ten days after demand : Col.

If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action : Kan. 23,45.

**§ 8355. Continuance after Dissolution.** Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise (or whose corporate existence for other purposes is terminated in any other manner : N.H., Mass., Me., N.J., Ore., Fla.), shall nevertheless be continued as a body corporate

for the term<sup>a</sup> of three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it, and of enabling it gradually to settle and close its concerns, to dispose of and convey its property, and to divide its capital stock, but not for the purpose of continuing the business for which it was established<sup>c</sup>: N.H. 148,18; Mass. 105,41; Me. 46,24; Vt. 3272; R.I. 152,8; N.J.<sup>a</sup> Corps. 59; Ind. 3006; Ill.<sup>a</sup> 32,10; Mich. 4867; Wis. 1764; Minn. 3143; Neb.<sup>a</sup> 16,67-68 & 143; Del. 70,4; V. 17,147,34<sup>a</sup>; N.C. 667; Tenn.<sup>b</sup> 1720; Ore.<sup>b</sup> 3233; Ala.<sup>b</sup> 1690; Miss. 1041; Fla. 34,27.

So in other states, but no period of such continuance is specified: Io. 1080; Neb. 16,143; Va. 1103; W.Va. 53,59; Ky. 56,13; Tenn. 1711; Uta. 2275; Ariz. 244.

During such period, the corporation may continue to use its corporate name: Ill. 32,11. May sue and be sued: Ill.; W.Va.; N.C. 698. Convey or transfer its property: W.Va. "Under the common seal or otherwise:" W.Va. "And all lawful acts be done in the corporate name:" W.Va.

A trustee, director, or other officer of a corporation shall not be suspended or removed from office by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general: N.Y. Civ. P. 1811.

The last three sections (see above, and §§ 8343, 8360) apply to an action or a special proceeding against a corporation or joint stock association created by or under the laws of the state, or a trustee, director, or other officer thereof; or against a corporation or joint stock association created by or under the laws of another state, government, or country, or a trustee, director, or other officer thereof, where the corporation or association does business within the state, or has within the state a business agency or a fiscal agency, or an agency for the transfer of its stock: N.Y. Civ. P. 1812.

Whenever an injunction shall have been granted against any incorporated company, as provided for in this act, and a receiver or receivers, or trustee or trustees, shall have been appointed, as further provided for, and said injunction and appointment shall have continued for four months, it shall not be lawful for the stockholders or directors of said corporation, or any other person whatever, to use or exercise the franchises of such corporation, or to transact any business in their name, or by color of their charter, except such as may be necessary to collect their property and assets, and to sell the same and distribute the proceeds among the creditors and stockholders of said corporation: N.J. Corps. 83.

And for all other purposes the charter may be declared void by the chancellor: N.J. Supp. Corps. 79.

NOTES. — <sup>a</sup> No term is specified in the noted states; two years, in Illinois. <sup>b</sup> Five years in states so noted. <sup>c</sup> Such continuing is expressly permitted: Tenn. 1887,197.

§ 8356. **Directors remain Trustees.** Upon the dissolution of any corporation<sup>a</sup> created or to be created (and unless other persons shall be appointed by the legislature, or a receiver by some court of competent authority, N.Y., O., Wis., Kan., Neb., Md., Tenn., Tex., Cal., Dak., Ida., Wy., Ala.), the directors or managers of the affairs of such corporation at the time of its dissolution, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the corporation, collect and pay the outstanding debts, and divide among the stockholders the moneys and other property that shall remain, after the payment of debts and necessary expenses: N.Y. 1890,563,19; N.J. Corps. 57; O. 5675; Wis. 1764; Kan. 23,42; Neb. 1,16,62; Md. 23,272; Del.V. 17,147,32; Tenn. 1721; Mo. 2513; Tex. 606; Cal. 5400; Nev. 822; Col. 341; Wash. 2441; Dak. Civ. C.

420; Mon. G. L. 489; Ida. 2648; Wy. 647; Ala. 1691; Fla.<sup>a</sup> 34,21; N.M. 210; Oka. 995.

And for this purpose may maintain or defend any judicial proceeding: O., Tex., Nev., Dak., Mon., Oka., Fla.

The persons so constituted trustees (or the receivers, O.) shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands: N.Y. 1890,563,20; N.J. Corps. 58; O. 6782; Neb. 1,16,62; Kan. 23,43; Md.; Del. ib. 33; Mo. 2513; Tenn. 1722; Col.; Dak. Civ. C. 420,421; Wy. 647; Tex. 606-7; Ala. 1692; Fla.; Oka. 995-6.

They may sell the real estate upon petition of a majority of the stock, giving bond, and distribute proceeds: Pa. Corps. 65.

The board of directors, or other officers having control, may appoint three trustees to adjust and settle the affairs of such corporation, and the trustees so appointed shall be authorized to use the corporate name of the corporation for such period as may be necessary for the adjustment and settlement of its affairs by suit or otherwise: O. 5687.

The trustees so appointed shall report annually to the stockholders of the corporation a full and succinct statement of its affairs; and a majority in interest of the stockholders may remove a trustee, or appoint a person to a vacancy occasioned by the death, resignation, or removal of a trustee: O. 5688.

They are severally responsible for such property to creditors and stockholders: Tex. 607.

On application to a chancellor and making a proper case, the power of such trustee, or any person appointed receiver of such dissolved corporation, may be continued for such length of time beyond five years as the chancellor may judge necessary for the purposes contemplated in the three preceding sections: Tenn. 1723; Ala. 1693.

So indefinitely: R.I. 1888,686,2.

Provided that this provision shall not extend to cases in which it may be necessary to appoint trustees, on judgment of dissolution: Miss. 1041.

NOTE. — <sup>a</sup> In cases of *voluntary* dissolution only.

### Art. 836. Receivers.

§ 8360. **When Appointed.** (Compare §§ 8345, 8335.) (1) When a corporation expires, or is dissolved (or before its expiration, or dissolution, upon sufficient cause being shown therefor: W.Va.), the court<sup>a</sup> may, on application of a creditor or stockholder, appoint one or more persons to be receivers, to take charge of and administer its assets: Mass. 105,42; 1884,203; O. 6781; Minn. 5565; Del. V.17,147,35; W.Va. 53,58; N.C. 668; Tex. 1461; Cal. 10565; Ore. 1061; Wash. 193; Mon. C. C. P. 229; Ida. 4329,4330; Wy. 2935; Uta. 3330-1; and whether such receiver be appointed or not, may make such orders and decrees, and award such injunctions in the cause, as justice and equity may require: Mass. 105,43; Del. ib. 36; W.Va.; N.C. 669; Tex. 1470.

(2) So, when it is insolvent or in imminent danger thereof: N.C. 668; Tex., Ore., Wash., Ida., Mon., Wy., Uta.

(3) For non-user or abuser of its corporate rights: N.C. So, when it "has forfeited" them: Ore., Wash., Ida., Mon., Uta.

At any time within such three years (see § 8355): N.C. But their powers may be continued beyond such time if necessary: N.C.



A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases :—

1. An action brought as prescribed in this title.
2. An action brought for the foreclosure of a mortgage upon the property for which the receiver is appointed, where the mortgage debt or the interest thereupon has remained unpaid at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation ; and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.
3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same.
4. A special proceeding for the voluntary dissolution of a corporation : N.Y. Civ. P. 1810.

Whenever a judgment is obtained against any corporation incorporated under the laws of this state, and an execution issued thereon is returned unsatisfied in whole or in part, upon the complaint of the person obtaining such judgment, or his representatives, the district court within the proper county may sequester the stock, property, things in action, and effects of such corporation, and appoint a receiver of the same: Minn. 5572.

Where there is an application for the appointment of a receiver, upon the ground that a corporation defendant is insolvent or in imminent danger of insolvency, and the subject of the action is the recovery of a money demand, the judge before whom such application is made or pending shall have the discretionary power to refuse the appointment of a receiver, if the corporation shall tender to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff, with at least two sufficient sureties : N.C. 1885,94,1.

No receiver shall ever be appointed of any joint stock, incorporated company, or of any copartnership or private person, on the petition of such joint stock, incorporated company, partnership, or person ; provided, that any stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a receiver appointed as in ordinary cases : Tex. 1470g.

“To this end the superior court of the county where such corporation was located shall have power to appoint a receiver, under proper restrictions, properly to administer such assets under its direction :” Ga. 1688.

In the event of dissolution from any other cause, a petition may be filed in the circuit court by any three or more creditors or stockholders of any corporation, praying that a receiver be appointed, and the court or the judge thereof at chambers shall hear and consider said petition, and for just and reasonable grounds shall grant said petition and appoint a receiver, and unless the president and directors or managers of such corporation shall swear that the corporation is solvent, and exhibit proof of the same satisfactory to the court or judge, such petition shall be granted and a receiver appointed ; but no voluntary dissolution shall be made or permitted after the institution of any suit or proceeding against any corporation for an involuntary or forced dissolution : Fla. 34,21.

NOTE.—<sup>a</sup> The superior court: N.C.

**§ 8361. Appointment and Bond.** Receivers of any corporation within the state must be resident citizens of the state : O. 3248.

They are required to give bond : O. 6781 ; Ind. 3016 ; Mich. 8182 ; Neb. 1,16,66 ; Ore. 1062 ; Wash. 194 ; Ida. 4332 ; Mon. C. C. P. 232 ; Wy. 2937 ; Uta. 3333 ; Miss. 1992,2600.

And make oath of office : Ore., Wash., Mon., Ida., Wy., Uta.

Any of the directors, trustees, or other officers of such corporation, or any of its stockholders, may be appointed receivers : N.Y. 3,8,3,66 ; O. 5657 ; Mich. 8182 ; Md. 23,

268; who, before entering upon the duties of their appointment, shall give such security to the people of this state, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys received by them : N.Y. ; O.; Mich. ; Cal. 10567.

No party, or attorney, or person interested in an action can be appointed receiver therein, without the written consent of the parties filed with the clerk : Cal. 10566 ; Ida. 4331 ; Mon. C. C. P. 231 ; Wy. 2936 ; Uta. 3332. If a receiver be appointed upon an *ex parte* application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause ; and the court may, in its discretion, at any time after said appointment, require an additional undertaking : Cal. Ida., Mon., Uta.

A receiver shall not be appointed unless the party praying the appointment shall have given the opposite party at least five days' notice of the time and place of making the application, and one additional day for every thirty miles of travel thereto, unless it shall appear that an immediate appointment is necessary, or good cause be shown for not giving notice : Miss. 1921.

This section shall apply to corporations heretofore or hereafter chartered by another state, which may have done business and acquired property or contracted debts in this state, and any of whose creditors, or stockholders, or their personal representatives, reside herein ; and the circuit court of any county wherein such creditor, stockholder, or personal representative may reside, or where such assets or property, or part thereof, may be, or where the person owing such debts or having such property in possession may reside, shall afford such relief as is prescribed in this and the next section : W.Va. 53,58.

The person nominated by the majority of the stockholders must be appointed receiver, if they can agree ; but if they fail to agree for ten days after the decree of dissolution, the chancellor, in term time or vacation, or the register in his absence, must appoint such receiver, requiring proper bond and sureties for the performance of his duties : Ala. 1687.

The attorney-general may, at any time, make a motion in the supreme court for an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or to compel him to account, or for such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership : N.Y. 1883,387,7.

No corporation shall be administered in any court for a longer period than three years from the date of such appointment ; and within three years such court shall wind up the affairs of such corporation, unless prevented by appeal of litigation : Tex. 1470f.

**§ 8362. Powers.** Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the security hereinbefore required, and shall be trustees of such estate for the benefit of the creditors of such corporation and of its stockholders : N.Y. 3,8,3,67 ; O. 5658 ; Mich. 8183 ; Md. 23,269 ; Miss. 2599.

They shall take charge of the estate and collect the debts : R.I. 1888,686 ; O. 6781 ; N.C. ; Miss.

They shall "reduce the assets to possession, and pay the debts under the rules prescribed for administrators : " *Id.* 3016.

The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver ; to take and keep possession of the prop-

erty, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize: Cal. 10563; Ida. 4333; Wash. 198; Mon. C. C. P. 233; Wy. 2938; Uta. 3334, Miss.

"Whose duty it shall be to convert all the assets of the company, including any unpaid balances due by stockholders on their shares, into cash, and to distribute the same, under the direction of the court, amongst the parties entitled thereto in the same manner, as near as may be, as is done in cases of insolvency of individuals:" R.I. 1888,686,2-4; La. D. 688.

If there be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same: N.Y. 3,8,3,75; O. 5664; Mich. 8191.

Such receivers shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of insolvent debtors may be made, pursuant to the provisions of the statutes: N.Y. 3,8,3,68; O. 5658; Mich. 8188. As to concealment and discovery of property, etc.: Mich.

In all cases where receivers have been or shall be appointed for any corporation of this state other than an insurance company, all property real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in, and held by such receiver: N.Y. 1884,285,1.

Receivers may generally prosecute and defend all suits for the corporation, whether newly brought or already begun: R.I.; O.; Mich. 8209; Md. 23,274; N.C.; Col. 258.

And shall be suable by the same name, or in their own names or individual capacities, for the debts owing by such corporation at the time of its dissolution: N.J. Corps. 58.

In all suits in any court of law or equity, which shall be pending in the name of any such incorporated company, as aforesaid, at the time of the appointment of a receiver or receivers, or trustee or trustees, as aforesaid, it shall be lawful for the said courts, and they are hereby directed, on application of the said receiver or receivers, or trustee or trustees, to cause the said receiver or receivers, or trustee or trustees, to be substituted as plaintiff or plaintiffs in the place and stead of the said company, or to carry on such suit in the name of the said company, for the use of the said receiver or receivers, or trustee or trustees: N.J. Corps. 81.

Funds in the hands of a receiver may be invested upon interest by order of the court, upon the consent of all the parties: Ida. 4334; Mon. C. C. P. 234; Wy. 2939; Uta. 3335.

**§ 8363. Special Powers.** Any corporation which now is or hereafter shall be in the hands of receivers, or of a receiver, by virtue of proceedings in the court of chancery, may, whenever such corporation shall be reorganizing or arranging its property and debts to resume the management and control of its property and business, with the consent of the court of chancery, mortgage its property and franchises for such amount as may be necessary, at a rate of interest not exceeding the rate of interest secured by any pre-existing mortgage of real estate made by such corporation: N.J. Supp. Corps. 90.

In case any such company, or person or persons whatever, shall think themselves or himself aggrieved by the proceedings or determination of the said receiver or receivers, or trustee or trustees, in the discharge of their duty, it shall be lawful for the party aggrieved to appeal to the chancellor, who shall, in a summary way, hear and determine the matter complained of, and make such order touching the same as shall be equitable and just; and the chancellor, in the execution of the powers and authority under this

act, is hereby vested with all the jurisdiction and power which is lawful for the court of chancery to exercise in suits depending in that court, and may proceed according to the rules, principles, and practices of that court, except when otherwise directed by this act; and all cases brought before the chancellor under this act shall be considered as depending in the court of chancery, and the orders and decisions carried into effect the same as in other causes of equity jurisdiction: N.J. Corps. 82.

Where the property of an insolvent corporation, in the hands of a receiver or receivers, or trustee or trustees, appointed under the laws of this state, is encumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court of chancery may order such receiver or receivers, or trustee or trustees, to sell the same, clear of encumbrances, at public or private sale, for the best price that can be obtained, bringing the money into the court of chancery, there to remain subject to the same liens and equities of all parties in interest as was the property before it was sold, and to be disposed of as the said court, by its decree, shall order and direct: N.J. Corps. 84.

Whenever receivers or trustees, appointed or to be appointed by virtue of this act, for the creditors and stockholders of any company, shall have charge of any canal, railroad, turnpike, or other work of a public nature, in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the corporators and creditors of such company have an interest, it shall be lawful for such receivers or trustees to sell or lease the principal work for the construction whereof the said company were incorporated, together with all the chartered rights, privileges, and franchises belonging to said company and appertaining to such principal work, and the purchaser or purchasers, lessee or lessees, of such principal work, chartered rights, privileges, and franchises, shall thereafter hold, use, and enjoy the same during the whole of the residue of the term limited in the charter of said company, or during the term in such lease specified, in as full and ample a manner as the stockholders of such company could or might have used and enjoyed the same; subject, however, to all the restrictions, limitations, and conditions contained in such charter; provided, that nothing herein contained shall be so construed as to apply to or in any wise affect any corporation authorized by law to exercise banking privileges: N.J. Corps. 85.

§ 8364. **Duties of Receivers.** (Compare §§ 8346, 8351, 8353.) The receivers<sup>a</sup> shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor; and if not, they shall distribute the same ratably among the creditors who prove their debts in the manner directed by any order or decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to and among those who are justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives: Mass. 105.44; Me. 46.26; Vt. 3275; R.I. 1888,686.3; N.J. Corps. 62; Ind. 3014; Minn. 3140-1; Del. V. 17,147,37; N.C. 670; Cal. 10565; Ala. 1688.

They may appoint agents, etc.: N.C.

The receivers shall be subject to all the duties and obligations by law imposed on trustees of insolvent debtors, so far as they may be applicable: N.Y. 3,8,3,74; O. 5658; Mich. 8184,8190.

All receivers, before assuming to act as such, shall be required to file with the clerk of the court by which, or by a judge of which, they may be appointed, a bond with such surety or sureties, and for such an amount, as such court or judge may order and approve, payable to the state, and conditioned for the faithful performance of their official duties.

Receivers may be removed at any time, at the pleasure of the court by which, or by a judge of which, they were appointed ; and if any receiver is removed, or declines to act, or dies, the court that appointed him or a judge of which appointed him, or, if the court be not in session, any judge of the superior court, may fill the vacancy.

When any action shall be brought to, or pending in, any court of equitable jurisdiction, in which an application shall be made for the appointment of a receiver, either judge of such court, or of the superior court, in vacation, after due notice given, may make such order in the premises as the exigencies of the case may require, and may from time to time rescind and modify the same ; and shall cause his proceedings to be certified to the court in which the action may be pending, at its next session, and shall be entitled to receive for the same the fees allowed by law for copies to clerks of courts.

The receivers, or receiver, if there be but one, of every insolvent corporation in this state, not already obliged by law to make reports to court covering substantially the same ground as hereinafter mentioned, shall at least once in every six months make, sign, swear to, and file with the clerk of the court by which they were appointed, a full and complete statement of all their doings as such receivers for the six months next prior to the filing of said statement, which statement shall contain a full and itemized account of all moneys received by them during the aforesaid period, the date of its receipt, the amount, the person from whom received, and on what account received ; also a full and itemized account of all moneys paid out by them during said period, the date of payment, the person to whom paid, and the purpose for which paid.

Receivers of a corporation appointed by judicial authority shall have the right to the possession of all its books, papers, and property, and power in their own names, or in its name, to commence and prosecute suits for and on behalf of said corporation ; to defend all suits brought against it or them ; to demand and receive all evidences of debt and property belonging to it, and to do and execute in its name, or in their names, as such receivers, all other acts and things which shall be necessary or proper in the execution of their trust ; and shall have all the powers for any of said purposes possessed by said corporation : Ct. 1318-1322.

The receiver shall, immediately on his appointment, give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors, and in addition thereto it shall notify all persons holding any open or subsisting contract of the corporation to present the same to him, in writing, and in detail, at the time and place in such notice specified, which shall be published for three weeks in some newspaper printed and of general circulation in the county wherein the principal place of business of the corporation is situate : O. 5660.

After the first publication of the notice of the appointment of a receiver, every person having possession of any property belonging to the corporation, and every person indebted thereto, shall account and answer to the receiver for the amount of such debt, and for the value of such property ; and all the provisions of law in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to such receiver, and to the property of the corporation, except as otherwise provided herein : O. 5662.

The receiver shall call a general meeting of the creditors of the corporation within four months from the time of his appointment, at which all accounts and demands for and against the corporation, and all its open and subsisting contracts, shall be ascertained and adjusted, as fully as may be, and the amount of money in the hands of the receiver declared, and he may settle controversies that arise between him and the debtors and creditors of the corporation by arbitrament or reference : O. 5663.

If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receiver shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent : Mich. 8185.

The chancellor shall direct the receiver to collect, by suit or otherwise, all the debts due the corporation, and sell property, real or personal, belonging to the corporation, and how he shall make title thereto to the purchaser; the chancellor may, in his discretion, authorize the receiver to proceed, without suit, to sell any or all of the debts and assets of the corporation at public sale for cash, or on such terms as in his judgment the interest of the parties may require: Ala. 1686.

NOTE. — "Trustees:" Me. And see § 8356.

§ 8365. **Accounts.** The receivers shall be subject to the control of the court of chancery, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal, by death, or otherwise, may be supplied by the court: N.Y. 3,8,3,86; O. 5669; Mich. 8201; Neb. 1,16,66; Miss. 1924.

So as to the time of making any dividends, and closing up the concerns: O. 5669.

When required by the court, the receiver shall render a full and accurate account of all his proceedings to the court, on oath, which may be referred to a referee or master commissioner to examine and report thereon; but before he renders any such account he shall insert a notice of his intention to present the same, once a week for three consecutive weeks, in some newspaper printed and of general circulation in the county wherein the principal place of business of the corporation is situate, specifying the time and place at which such account will be rendered: O. 5670.

So, provisions are made for an accounting by receivers: Mich. 8202-3; Miss. 2606.

The receiver shall also account from time to time, in the same manner and with like effect, for all money which comes to his hands after such account is rendered, and for all money retained by him for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends: O. 5672; Mich. 8206.

All receivers of insolvent corporations who are now required by law to make and file reports of their proceedings shall hereafter, at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this state: N.Y. 1880,537,1.

It shall be the duty of every receiver of an insurance, banking, or railroad corporation, or trust company, to present every six months to the special term of the supreme court, and to file a copy of the same if a receiver of an insurance company with the superintendent of insurance, and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months: N.Y. 1883,387,4.

Such receiver to keep an account of all moneys received by him, and on the first days of January, April, July, and October, in each and every year, to make and file a written statement, showing the amount of money received, the amount he has a right to retain, the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto, on demand, at any time after such statement. Such account, statement, and all the books and papers of the corporation in the hands of such receiver, shall at all reasonable times be open for the inspection of all persons having an interest therein. In case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him by this title, the supreme court, at either a general or special term, shall, on the application of the party aggrieved, unless such neglect or refusal shall be satisfactorily explained to the court, forthwith remove such receiver. Such receiver shall also be liable to pay to the party interested interest at the rate of ten per cent per annum on all moneys due to such party and retained by him more than one day after such demand made as aforesaid: N.Y. 3,1,2,42.

When a receiver of a corporation has, under the order of the court, made improvements upon the property of said corporation, and has also, under the order of the court

appointing him, purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended such road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid; and if there are any liens of any kind upon the property of said corporation in the hands of such receiver, and the said property is sold under the order of the court, and said liens foreclosed, then it shall be and is hereby made the duty of the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, to detain in the hands of the clerk of the court money to the full value of the improvements made by said receiver of said property out of the proceeds of the sale of the property sold, and pay the same over to any person or persons who has or may have a claim, debt, or judgment against said corporation; and the court in ordering the sale of the property shall require sufficient cash money to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver: Tex. 1470d.

§ 8366. **Winding up.** (Compare §§ 8346, 8351, 8353, 8364.) The receivers shall distribute the residue of the moneys in their hands among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, as follows:—

(A) 1. All debts entitled to a preference under the laws of the United States.

2. Judgments actually obtained against such corporation, to the extent of the value of the real estate on which they shall respectively be liens.

3. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties: N.Y. 3,8,3,79.

Pending such proceeding the receiver remains in possession. No suit may be commenced unless founded on a fraud or wilful misconduct after the expiration of sixty days from the time of his discharge, but the corporation is liable thereafter for any act for which he may not be sued: N.Y. 1890,564,5.

(B) Any creditor who shall refuse to sign such agreement may, upon notice given to such company within sixty days from the discharge of the receiver, apply to the chancellor for an assessment of the value of the claim of such creditor, and the chancellor may appoint three commissioners to determine the actual value of the property of such company while the same was in the hands of the receiver, and the proportionate value of the claim of such creditor, and the value or proportionate amount of such claim shall be paid by the company in discharge of the debt, in order that such claimant may receive the full proportion that would have been realized if a sale of the property had been ordered by the court to be made by the receiver: N.J. Supp. Corps. 66.

Either party may have a right to appeal from the decision of the commissioners, when made under the second section of this act, to the chancellor, who shall hear and determine the same, or, at the request of either party, an issue may be framed for the trial of the questions submitted to said commissioners before the circuit court of any county of this state, and the chancellor may order that such further proceedings shall be had as may be in accordance with the practice of the court of chancery and the courts of law in the trial of feigned issues out of the court of chancery: N.J. Supp. Corps. 67.

(C) The receiver shall distribute the residue of the money in his hands in the payment of obligations of the corporation which have been exhibited by creditors, and ascertained in the following order:—

1. Debts entitled to a preference under the laws of the United States.

2. Mortgages, judgments, and other liens on the real estate of the corporation, in the order of their priority.

3. Debts which are liens upon the capital stock or property of the corporation, other than real estate, in the order of their priority, and the extent of the value of the stock or other property on which they are liens : O. 5667.

The receiver may, from time to time, make dividends of the money in his hands among the creditors of the corporation, until they are paid in full ; but no dividend shall be made to the stockholders of the corporation until after the final dividend to creditors ; and if, after such final dividend is made, there remain any surplus in the hands of the receiver, he shall distribute the same among the stockholders of the corporation, in proportion to the respective amounts paid in by them severally on their shares of stock : O. 5668.

(D) So, the surplus after paying debts and costs is distributed among the stockholders *pro rata* : Ind. 3017.

(E) 1. All debts entitled to a preference under the laws of the United States.

2. Executions actually levied against such corporations to the extent of the property on which they shall respectively be levied, and according to their legal priority.

3. Creditors having made special deposits, if such deposits remain in kind.

4. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties : Mich. 8195.

(F) After the payment of costs, debts due the United States, the State of Minnesota, all taxes or assignments levied and unpaid, expenses of the receivership and executing the trust, the receiver shall pay in full, if sufficient there remains for that purpose, the claims duly proven of all servants, clerks, or laborers for personal services or wages owing from such corporation for services performed for three months preceding the appointment of a receiver of such corporation, as provided in section nine (9), and the balance of said estate shall then be distributed among the general creditors of such corporation under the direction of the court : Minn. 5568.

(G) All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action ; and the same shall be a lien on such earnings : Tex. 1470e.

(H) The proceeds of debts collected and property sold shall be applied by such trustees in payment of debts, as may be determined by the court ; provided that the notes or liabilities of any such corporation or other body shall be received in payment of debts due it : Miss. 2599.

1. The compensation to the trustees and commissioners, and expenses incurred in settling the affairs of the corporation. 2. Debts due to the state or any county for taxes or otherwise. 3. Debts due for costs or fees to officers. 4. A ratable distribution amongst creditors who have proved their claims and had them allowed. 5. The surplus, if any, shall be ratably distributed among the stockholders : Miss. 2606.

§ 8367. **Receiver's Compensation.** Every receiver shall be allowed to receive as compensation for his services as such receiver five per centum for the first one hundred thousand dollars received and paid out, and two and one half per centum on all sums received and paid out in excess of the said one hundred thousand dollars ; but no receiver shall be allowed or shall receive, from such percentages or otherwise, for his said services for any one year any greater sum or compensation than twelve thousand dollars, nor for any period less than one year more than at the rate of twelve thousand dollars per year ; provided that, where more than one receiver shall be appointed, the compensation herein provided shall be divided between such receivers : N.Y. 1883,387,2.

The receiver's compensation is an allowance made by the court out of the assets : Ind. 3017 ; Miss. 1923.

The receiver shall, in addition to his actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed to executors or administrators, as well as reasonable counsel fees for the services rendered him : O. 5665 ; Mich. 8192.



**Art. 837. Reorganization.**

§ 8370. **Special Statutes.** Whenever any corporation, now existing or hereafter formed, may have conveyed all their corporate property, real and personal, together with their franchises growing out of or appertaining thereto, or together with all their corporate franchises, by way of mortgage or deed of trust, in case of the sale of the same thereunder, the purchasers at such sale and their associates shall be entitled to have and exercise all the privileges and franchises held by such corporation, and shall be deemed and taken to be the true owners of its corporate rights, and to be corporators vested with all the rights, powers, privileges, and benefits conferred by law or the statutes of this state upon such corporations, in the same manner and to the same extent as if they were the original corporators at the formation of such corporation; and they shall, within thirty days after such sale becomes absolute, file articles of association, together with a copy of the order confirming the sale, in the office of the secretary of state, and in such other office or offices as the original articles of association or corporation were required to be filed in, and they shall hold title to and enjoy all property acquired by or donated to such corporation which may have been purchased by them at such sale; and such (successor) corporation may issue, and themselves hold, new stock in said corporation to such an amount and of such denomination as was prescribed in the articles of association or charter of the original corporation. After filing the new articles of association as required by this act, the old officers of said corporation shall be superseded, and the old stock in said corporation shall be deemed forfeited and extinguished, and may be cancelled on the books of said corporation; and the new stockholders and the officers by them chosen or elected shall, in the law, be deemed and taken to be the stockholders and officers of said corporation, and the said corporation shall not be liable for any debts or obligations except those by it thereafter contracted. But no prior mortgage or lien shall be in any way affected by such proceedings, and all property whatsoever, if any, that shall not be sold, shall remain liable for all the debts of such original corporation, and no liability of any corporators, director, or other persons whatsoever, shall be in any way lessened or affected by any proceeding or act authorized by this act; *provided*, that in making such sale the property essential to the exercise of corporate rights, together with the corporate franchises, shall be deemed an entire thing, and shall be sold as such, separate from any other property mortgaged: Mich. 4885.

A similar statute has been passed in: Tenn. 1885,84.

Sections 85 to 108 of this chapter [Maine Statutes] apply to all mortgages, whether heretofore or hereafter given, by any corporation to the trustees to secure the payment of scrip or bonds wherever the principal of said bonds has been due and unpaid three years, or on which no interest has been paid for three years, as if the mortgage had been legally foreclosed: Me. 51,109. (See Railroads, Title II., Arts. 864, 893.)

A corporation formed by the holders of such scrip or bonds, or the holders of a majority of them, may bring a bill in equity to foreclose: Me. 51,110.

The capital stock of such new corporation shall be equal to the amount of unpaid bonds and overdue coupons secured by such mortgage, taken at their face at the time of the organization of the new corporation, together with the amount required to redeem any prior mortgage, and shall be divided into shares of one hundred dollars each. All stock issued under the aforesaid provisions shall be taken and considered as paid for in full, and shall not be liable to further assessment; and no person taking or holding the same shall by reason thereof be liable for the debts of such corporation: Me. 51,51.

Whenever default shall be made by any corporation in the payment of principal or interest of any of its bonds secured by mortgage or deed of trust of its property,

any stockholder may at any time during the pendency of the foreclosure of such mortgage or deed of trust, and before the sale thereunder, pay to the mortgagees or grantees in such mortgage or deed, for the use and benefit of the holders of such bonds, a sum equal to such proportion of the amount due and secured to be paid by such mortgage or deed as his stock in such corporation shall bear to its whole capital stock, and on making such payment he shall to the extent thereof become and be interested in such mortgage or deed, and be protected thereby : N.Y. 1890,564,49.

When the franchises, privileges, easements, and the property and estate of any corporation of this state have been sold under a mortgage, the purchasers acquiring title may associate with them any number of persons, and upon making and filing articles become a body corporate, and may take a conveyance of corporate franchises and property : N.Y. 1890,564,3.

The articles to be filed by the new company must set forth the name, the amount of stock, number of shares and classes thereof, number of directors and names of those appointed for first year, and any plan or agreement which may have been entered into at or previous to time of sale in anticipation of formation of the new company : N.Y. 1890,564,3.

At or previous to the sale the purchasers, or the persons for whom the purchase is made, may enter into a plan for readjustment of the respective interests of mortgage creditors and stockholders, for the representation of, and regulate voting by, holders of preferred or common stock or bonds of the old company or of the new company, to be exercised in such manner as shall be described, with suitable provision for bondholders voting by proxy, and the new corporation may issue its bonds or stock accordingly : N.Y. 1890,564,4.

The supreme court may direct a sale of the whole of the property mortgaged for non-payment of interest or principal : N.Y. 1890,564,5.

A stockholder may assent to the reorganization plan within six months after the organization of the new company : N.Y. 1890,564,6.

Whenever the property and franchises of any corporation created by or under any law of this state shall be sold and conveyed under and by virtue of any process or decree of any court, the person or persons for and on whose account such property and franchises may be purchased shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claim, and demand in law and equity, of, in, and to such property and franchises, with the appurtenances, and with all the rights and powers, immunities, privileges, and franchises of the corporation, as whose the same may have been so sold, and which may have been granted to or conferred thereupon by any act or acts of assembly whatsoever in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby : Pa. Corps. 120.

And the person [*sic*] for and on whose account any such property and franchises may have been purchased shall meet within thirty days after the conveyance thereof shall be delivered, public notice of the time and place of such meeting having been given at least once a week for two weeks in at least one newspaper published in the city or county in which such sale may have been held, and organize said new corporation by electing a president and board of six directors, and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, not exceeding the amount authorized in the original charter, and shall have power and authority to make and issue certificates therefor to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each ; and may then, or at any time thereafter, create and issue preferred stock to such an amount and on such terms as they may deem necessary, and from time to time issue bonds at a rate of interest not exceeding six per centum, to any amount not exceeding their capital stock, and to

secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either or any part or parts thereof: Pa. Corps. 120.

Such new corporation, within one month after organization, must make a certificate specifying its name, amount of stock, and names of officers, and record it with the secretary of state: Pa. Corps. 121.

The person or persons for or on whose account the same may have been, or shall hereafter be, purchased, shall have power and authority to determine the amount of the capital stock and bonds to be issued therefor, and to issue therefor certificates for the said capital stock and also bonds, and secure the same by mortgage or mortgages on the real and personal property, corporate rights, and franchises purchased. Such stock or bonds, or both, shall be issued to the purchaser or purchasers, for their respective interests, in such amounts and proportions as may be determined by themselves, and shall be deemed and taken to have been issued for and in consideration of the property and franchises so purchased and received: Pa. Corps. 123.

Any person or persons for whom or on whose account the property and franchises of any such corporation may be purchased, at any sale which may be had under and in pursuance of any mortgage which may be created under the provisions of the first section of this act, shall be and they are hereby constituted a body politic, with all the rights, immunities, and privileges, and subject to all the restrictions and liabilities, of the corporation whose property and franchises may be thus sold: Pa. Corps. 43.

Any person or association of persons which shall have, or may hereafter, become the owner or assignee of the rights, powers, privileges, and franchises of any corporation created or organized by or under any law of this state, by purchase under a mortgage sale, sale in bankrupt proceedings, or sale under any judgment, order, decree, or proceedings of any court in this state, including the courts of the United States sitting herein, may, at any time within two years after such purchase or assignment, organize anew by filing articles of organization, as provided in this chapter, or elsewhere in these statutes, respecting corporations for similar purposes, and shall thereupon have the same rights, privileges, and franchises which such corporation had or was entitled to have at the time of such purchase and sale, and such as are provided by these statutes applicable thereto. They may fix at what price, or for what number of shares, the rights, privileges, powers, franchises, or property of such former corporations, purchased by them, shall be put into the new organization: Wis. 1788.

Whenever there shall be a sale of the works and property of any corporation other than a railroad corporation under a decree, mortgage, or trust deed, and there be a conveyance to the purchaser of the same, said purchaser or purchasers shall become a corporation in the same manner, and be entitled to the franchises of the old corporation in the same manner, as is provided for railroad corporations, and the old corporation shall be *ipso facto* dissolved. But the purchaser at such sale shall not obtain the works constructed, or property acquired, after the making of the said deed of trust or mortgage: W.Va. 54,82.

If sale be made under a deed of trust or mortgage executed by any corporation on all its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale, not only the works and property of the corporation as they were at the time of making the deed of trust or mortgage, but any works which the corporation may after that time and before the sale have constructed, and all other property of which it may be possessed at the time of the sale other than debts due to it. Upon such conveyance to the purchaser, the said corporation shall *ipso facto* be dissolved, and the said purchaser shall forthwith be a new corporation by any name which may be set forth in the said conveyance, or in any writing signed by him and recorded in the same manner in which the conveyance shall be recorded: N.C. 697.

The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights, and privileges, and perform all such duties, as would have been or should have been performed by the first corporation but for such sale and conveyance, save only that the corporation so created shall be entitled to the debts due to the first corporation, and shall not be liable for any debts of or claims against the first corporation which may not be expressly assumed in the contract of purchase; nor shall the property, franchise, or profits of such new corporations be exempt from taxation. And the whole profits of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding the amount of stock in the first corporation at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day, and at such place, as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper: N.C. 698.

### **Art. 838. Consolidation.**

§ 8380. **When Allowed.** In one state and one territory any corporation may consolidate with any other upon two-thirds vote of all the stock at a special meeting, as in the case of change of name, etc. (Art. 809): Ill. 32,50; Uta. 2273.

Provided further, that the provisions of this act, in reference to the consolidation of corporations, shall only apply to corporations of the same kind, and engaged in the same general business, and carrying on their business in the same vicinity, and that no more than two corporations now existing shall be consolidated into one under the provisions hereof: Ill. 32,50.

No corporation shall sell, lease, or in any manner part with its franchise, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the subject matter of the proposed sale, lease, or consolidation. All such sales, leases, and consolidations shall be subject to the provisions of this act, and to the prior liens of stockholders as herein defined.

If any stockholder in any corporation which shall vote to sell, lease, or consolidate its franchise shall vote in the negative, and shall file his written dissent . . . within one month from the day of such vote, the corporation in which he is a stockholder may, within one month after such dissent is so filed, enter a petition with the supreme judicial court, sitting in equity, . . . making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholders may be determined, and for other appropriate relief.

If any such corporation shall fail to enter such petition as aforesaid, any stockholder dissenting as aforesaid may within one month thereafter enter such petition and prosecute the same: Me. 1891,84,1-3.

The court, or any justice thereof, in term time or in vacation, shall hear the parties, and determine as soon as practicable the value of the stock of such dissenting stockholders; and shall make and enforce all such orders and decrees as may be necessary to secure to such stockholders all their rights: Me. 1891,84,4.

Within thirty days after filing the decree determining such values, as aforesaid, either party may enter an appeal therefrom, to be heard at the next term of the supreme judicial court: Me. 1891,84,5.

All stockholders entitled to a remedy hereunder shall have a lien upon the property of the corporations in which they are stockholders, which shall take precedence of all mortgages or leases of any kind made after any vote of sale, lease, or consolidation: Me. 1891,84,8.

In the event either of the corporations interested has consolidated its stock with corporations created by any other state or states, or the stock therein is held in virtue of concurrent legislation of one or more states, and proceedings have been commenced for valuing the stock and paying the value thereof in any state having jurisdiction, such proceedings shall, while pending, be a bar to any under this statute ; but if such proceedings in any other state shall fail for any reason not touching the merits, a petition may be filed, as herein provided, within two months thereafter : Me. 1891,84,12.

It shall be lawful for any corporation in the same manner to sell, assign, dispose of, and convey to any corporation created under or accepting the provisions of this act, its franchises, and all its property, real, personal, and mixed ; and thereafter such corporation shall cease to exist, and the said property and franchises, not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid : Pa. Corps. 38.

**§ 8381. Effect.** In all cases when any company or corporation, chartered or organized under the laws of this state, shall consolidate its property, stock, or franchises with any other company or companies, such consolidated company shall be liable for all debts or liabilities of each company included in said consolidated company existing or accrued prior to such consolidation ; and actions may be brought and maintained, and recovery had therefor, against such consolidated company : Ill. 32,65.

Any corporation incorporated under this article, or any corporation heretofore formed and now existing, the capital stock of which has been fully paid up, may unite with any other corporation incorporated under this article, the capital stock of which has also been fully paid up, where the said corporations have been originally incorporated in whole or in part for the same purpose, and may by such union form one new corporation ; provided, that a majority of the stockholders of each of the said corporations forming such union shall assent thereto. Such union or consolidation shall be made upon such terms and conditions as shall be agreed upon by the said corporations ; and the said new consolidated corporation shall have such name and such capital stock as shall be agreed upon between the corporations parties thereto ; and when such union or consolidation is made, a certificate of the said union and of the particulars thereof shall be executed by the said corporations, and be acknowledged and recorded as other certificates of incorporations are in this article directed to be acknowledged and recorded : Md. 23,39.

In Tennessee, street railway, gas, electric light, and water companies are forbidden to consolidate with similar companies within any city or town in the state, or partly in such city or town, or to purchase or lease franchises or property of such other corporations, except with the permission and written consent of the municipal government of the city or town in which such corporations respectively are located or carry on their business, and then only upon such terms and conditions as the said municipal governments may respectively prescribe ; provided such terms do not violate any law of the state. Violation of these terms causes a forfeiture of the charter of both corporations : Tenn. 1889,70.

All and any corporations heretofore or hereafter formed in the state of Nevada, and under its laws, upon the written consent or request of the holder or holders of three fourths of the stock thereof, filed with the secretary of the corporation to be affected, shall have the power and right to consolidate all corporate franchises and property of every name and nature with any other then existent corporation or corporations of the state of Nevada, or of any state or territory in the United States of America, as may be agreed by the boards of trustees or directors of the corporations consolidating.

Such consolidation shall not relieve the consolidating corporations, or either of them, from any liabilities, nor shall it extinguish or limit any franchise or right. It shall be evidenced by a certificate filed in the office of the secretary of state ; provided, that

the consolidated company shall be and remain subject to the laws of the state of Nevada, and the state or territory respectively of which the corporation consolidated is the creature, and shall have in all respects the same privileges as though the consolidation had not taken place, and the same rights and privileges as if said consolidated company had been incorporated in the state of Nevada: Nev. 1075, 1076.

It appears possible that one Colorado statute authorizing consolidation between railroads applies as well to corporations organized for other purposes: Col. Gen. Stats. 1883, 349. See Art. 873.

Where two or more corporations organized under this act shall desire to unite and consolidate, it shall be lawful for them so to unite and consolidate; provided that, at a regular meeting of said corporations, two thirds of the stockholders thereof shall by vote determine to so unite and consolidate; provided further, that notice of the meetings of such several corporations for such purpose shall be called by notice published in some newspaper published at Salt Lake City for at least thirty days before such meeting shall be held: Uta. 1884, 45, 1, 7.

In other states there are no laws for the consolidation of corporations in general. For railways, etc., see Title II. and the other titles.

## CHAPTER IV.

### SPECIAL CLASSES OF CORPORATIONS.

#### Art. 840. Foreign Corporations.

§ 8400. **General Provisions.** In several states, foreign corporations and the officers and agents thereof, doing business in the state, are subjected to all the liabilities, restrictions, and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers: Ill. 32, 26; Mo. 1891, p. 75; Col. 260; N.M. 218.

The provisions of this act are hereby made conditions upon which such corporations may be authorized to do business in this state, or hold titles to or liens on real estate therein: Ind. 3030; W.Va. 54, 30; 1887, 73; Wash. 1890, 9, 1 (p. 288); Code 2478.

In Washington the code provisions (§§ 2478-2487) are probably superseded by the later statute, 1890, chap. 9.

No foreign corporation which has not in good faith complied with the provisions of this act, and taken out a permit, shall hereafter be authorized (1) to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until they have complied herewith and taken out such permit: Io. 1886, 76, 2.

(2) To sue, or maintain any action: Tex. †† 574a.

(3) Its acts and contracts are void: Mon. G. L. 444.

Any corporation organized under the laws of any other state or states, territory or territories, which has filed or may hereafter file with the secretary of state of this state a true copy of its charter or articles of association, shall, on filing with the secretary of state a certified copy of a resolution adopted by its board of directors accepting the provisions of this act, be and become a body corporate of this state: Neb. 1889, 42, 1.

Provided further, that such foreign corporations complying with the provisions of this article shall have all the rights and privileges of like domestic corporations, including the right to exercise the right of eminent domain, and shall be subject to the laws of this territory applicable to like domestic corporations: Ida. 2653.

**§ 8401. Recognition.** Corporations created by other states or foreign governments are recognized in our courts only by comity, and so long as the same comity is extended in their courts to corporations created by this state : Ga. 1675.

Foreign corporations, doing business in this state, shall be subject to all the provisions of this act (i. e. Title I.) so far as the same can be applied to foreign corporations : N.J. Corps. 103.

Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power, and is hereby authorized, to sue and to be sued in any court having competent jurisdiction ; to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of in the corporate name all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its incorporation, and also any interest in real estate by mortgage or otherwise do [due] to or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this act, and generally do and perform every act and transact every kind of business within this state, in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by [§§ 8402, 8403] of this act. Provided, however, that this act shall not be construed so as to allow such foreign corporation to transact business within the state on more favorable conditions than are prescribed by law for similar corporations organized under the laws of this state : and provided, further, that no corporation the majority of the capital stock of which is owned by aliens other than those who, in good faith, have declared their intentions to become citizens of the United States, shall acquire the ownership of any lands in this state other than lands containing valuable deposits of minerals, metals, iron, coal, or fire-clay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of products therefrom, except where acquired under mortgage or in good faith in the ordinary course of justice in the collection of debts : provided, further, that no foreign corporation which is hereafter organized, which has among its other powers the business of dealing in real estate and buying and selling the same, and for the purpose of carrying on a real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein, in this state ; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized : Wash. 1890,9,1.

The acts of the agents of any foreign corporation shall have the same force and validity as the acts of agents of private persons, within the scope of their authority ; but such foreign corporation shall not, by their agents or otherwise, do or commit any act in this state contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in this state, or on any cause of action originating therein, which is in violation of law or public policy : Miss. 1042.

**§ 8402. Filing Charter in State.** Every company incorporated under the laws of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this state, and now or hereafter doing business within this state, shall file in the office of the secretary of state (the county recorder, Nev.) a copy of their charter or articles of incorporation ; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and (except in Mo., Wash., Ariz.) of such general incorporation law duly certified and authenticated by the proper authority of such foreign state, kingdom, or territory : Mass.<sup>a</sup> 1884,330,3 ; W.Va. 54,30 ; Mo. 1891, p. 75 : Tenn.

1992-3; Tex.<sup>a</sup> §§ 574; Nev. 1073; Col. 261; Wash. 1890,9,2; Mon. G. L. 442; Wy.<sup>a</sup> 600; Uta. 2293; N.M. 218; Ariz. 347.

And also with the recorder of deeds in the county where their business is conducted: W.Va., Wy., Uta., N.M., Ariz.

In *each* county where, etc.: Tenn.<sup>b</sup>

A certificate of such filing with the secretary is recorded with the county clerk: W.Va.

It must also contain a corrected list of officers: Nev. Its by-laws: Uta.

The secretary thereupon issues a "permit," which must be renewed every ten years: Tex.†† So, a certificate: Mo.

No corporation created or organized under the laws of any other state or territory shall transact any business within this state, or acquire, hold, and dispose of property real, personal, or mixed within this state, until such corporation shall have filed in the office of the secretary of the state a duly authenticated copy of its charter or articles of incorporation, and shall have complied with the provisions of this article: (provided, that the provisions of this act shall not apply to corporations or associations created for religious or charitable purposes solely: Dak., Oka.): Neb. 1889,42; Io.\*\* 1886,76; Dak. 567; Ariz. 349; Oka. 1244.

So, they may not enforce contracts before compliance with these provisions: Ind. 3025; Ark. 1887,135,2.

Thereupon they shall be entitled, for the purposes for which they were incorporated, to all the rights, benefits, and privileges secured under this act, and must conform to all its provisions: N.M. 216.

In others, they thereupon become corporations of the state: Neb.; Tenn.<sup>b</sup> 1994.

And also with the secretary of state a statement, to be verified by the oath of the president and secretary of such incorporation, and attested by a majority of its board of directors, showing, —

First. The name of such incorporation, and the location of its principal office or place of business without this state; and if it is to have any place of business or principal office within this state, the location thereof: Mon. G. L. 442.

Second. The amount of its capital stock: Mass.<sup>a</sup> 1884,330,3; 1891,341; Mon.

Third. The amount of its capital stock actually paid in money: Mass.<sup>a</sup> Mon.

Fourth. The amount of its capital stock paid in any other way, and in what: Mass.<sup>a</sup> Mon.

Fifth. The amount of the assets of the incorporation: Mass.<sup>a</sup> Mon.; and of what the assets consists, with the actual cash value thereof: Mon.

Sixth. The liabilities of such incorporation: Mass.<sup>a</sup> Mon.; and if any of its indebtedness is secured, how secured, and upon what property: Mon.

"In such form as the commissioner of corporations shall require:" Mass.<sup>a</sup> 1891,341.

Seventh. Any increase or decrease of capital stock: Mass.<sup>a</sup>

Under a money penalty: Mass.<sup>a</sup>

Accompanied by a resolution of its board of directors or stockholders, authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transferring its business, and requesting the issuance to such corporation of a permit to transact business in this state. Said application to contain a stipulation that said permit shall be subject to each of the provisions of this act. And thereupon the secretary of state shall issue to such corporation a permit in such form as he may prescribe for the general transaction of the business of such corporation. And upon the receipt of such permit such corporation shall be permitted and authorized to conduct and carry on its business in this state: Io. 1886,76,1.

Corporations of other states, doing business in this state, and in which three or more of the stockholders are citizens of this state, may become corporations of this state



under the last act by preparing a certificate stating its name, purpose, and place of business, term for which it is to exist, names and residences and number of shares of stockholders, names and residences of directors, amount of stock and number and par value of shares, the legislation under which it was originally created, and its financial condition, showing stock paid in, funded and floating debt, the value of property, and cash assets. Said certificate must be accompanied by a certificate under the corporate seal showing the consent of a majority in interest to such application for a charter, and to a renunciation of its original charter as to such privileges as are not enjoyed by corporations of its class under the laws of this state : Pa. Corps. 133.

It shall be acknowledged by three directors, before the recorder of the county where business is to be, and be sworn to by them, then produced to the governor, and if he approves letters patent issue incorporating the said stockholders, and the certificate shall be recorded with the secretary of state, and thereupon said corporation exists as a corporation of this state under the provisions and law regulating corporations of this class and of this charter, and its original privileges, powers, and assets shall vest in it as if its original charter had remained in force save as by general law, and said certificate expressly stated otherwise : Pa. Corps. 134,135.

If any such charter or articles of association, or any part thereof, filed as aforesaid in the office of the secretary of state, should be in contravention or violation of the laws of this state, all such parts thereof as may be found to be in conflict with the laws of this state shall be null and void : Tenn. 2003.

Copies of such charters, statutes, and certificates, duly certified by the secretary of state (or county recorder, Nev.) under his seal of office, shall be received in all courts of this state as sufficient evidence of the corporate character of such incorporations, and of all their powers, duties, and liabilities, and the originals thereof may in like manner be used in evidence of these matters with like effect : Col. 263 ; Nev. 1073 ; N.M. 220.

Whenever any foreign corporation, which is doing business according to law in this territory, shall expire by limitation or otherwise, it shall be the duty of the agent or representative of such corporation to file and publish notices of such expiration, in the same manner as hereinbefore provided : Wy. 656.

Any corporation incorporated under the general laws of any contiguous state or territory of the United States for the purpose of constructing telegraph lines, railroads, or wagon roads, desiring to extend such lines into the territory, must record with the secretary of the territory and in the office of the probate clerk of the county where is their principal office, a certified copy of its articles of incorporation : N.M. 215. Compare § 8712.

This section shall not apply to railroad companies, (nor to mining and manufacturing companies actually conducting their mining and manufacturing operations wholly without the commonwealth, nor to those foreign corporations which are required to make annual returns to other officers of the commonwealth than the commissioner of corporations : Mass.) : Mass. 1891,341,1 ; Mo. Nor to insurance companies : Mo.

**Penalties.** A failure to comply with the provisions of this section and § 8403 shall render each and every officer, agent, and stockholder of any such corporation, so failing herein, jointly and severally personally liable on any and all contracts of such company made within this state during the time that such corporation is so in default : Col. 262 ; Wy. 601.

In other states a money penalty upon the corporation only (also) is inflicted : Io. 1886,76 ; W.Va. 54,24 ; Mo. 1891, p. 76 ; Ala. 1887,60 ; Mon. G. L. 444.

Any person or persons, agent, officer, or employee of any such foreign corporation, who shall transact any business within this commonwealth for any such foreign corporation, without the provisions of this act being complied with, shall be guilty of misdemeanor or subject to a penalty : Pa. Corps. 130 ; Io. ; Ind. 3028 ; Nev. 1074.

Provided that in all actions against such corporations, associations, or companies which have neglected to file the proper certificate or act of their incorporation, as heretofore provided, it shall be sufficient to establish the legal existence of such corporation by the proof of their acting as such : Nev. 1074.

Any failure to comply with the provisions of sections 567, 568, and 569 of the civil code of this state, and the acts amendatory thereof, shall render each and every officer, agent, and stockholder of any such corporation so failing therein jointly and severally liable to any and all contracts of such corporation made within this state during the time such corporation is so in default : N.D. 1890,193.

NOTES. — <sup>a</sup> Does not apply to insurance companies. <sup>b</sup> Applies only to manufacturing and mining companies.

§ 8403. **Agent in State.** (See Vol. I. § 447.) All foreign transportation companies, whether by rail, steam, vessel, stages, or otherwise, doing business in this state, must file with the secretary of state an appointment of an attorney to reside in the state and have an office therein. He may accept service of process : Wis. 1750a.

All foreign corporations having a usual place of business in the state must, before doing business therein, appoint the commissioner of corporations such attorney : Mass.<sup>a</sup> 1884,330,1.

No foreign corporation shall do any business in this commonwealth until said corporation shall have established an office or offices, and appointed an agent or agents for the transaction of its business therein : Pa. Corps. 128.

Foreign corporations (except mercantile, La.) shall, before they are authorized or permitted to do any business in this state, make and file a certificate, signed by the president and secretary of such corporation duly acknowledged, with the secretary of state, and (except in Wash., Ala.) in the office of the recorder of deeds of the county in which such business is carried on, designating the principal place where the business of such corporation shall be carried on in this state, and an authorized agent or agents in this state residing at its principal place of business upon whom process may be served : Col. 260 ; Ida. 2653 ; N.M. 218 ; Ariz. 348, 350 ; Wash. 1890,9,3 ; Ala. 1887,60 ; La. 1890,149.

Such agent must be *bona fide* resident in such county : Ariz. 350.

Every corporation having its principal office or place of business outside the State shall (within thirty days after organizing, W. Va.) by power of attorney appoint some person residing in the state to accept service, and make return of its property for taxation, which power shall be recorded with the clerk of the county court and in the office of the secretary of state : W.Va. 54,24 ; Va. 1104.

Said corporation shall file (within twenty days after the clerk's election or any change of location, Me.) in the registry of deeds in the county<sup>b</sup> where it is established or has its principal office a certificate giving full name and residence of such clerk or agent and location of his office (and service upon such clerk is sufficient, Me.), (under penalty of \$100 or forfeiture of franchise after six months' request so to do, Me.) : Me. 48,11 ; 1889,263 ; Pa. Corps.<sup>b</sup> 129 ; Ind.<sup>c</sup> 3025.

Every foreign corporation shall appoint in the state an agent upon whom process may be served, by filing certificate with the secretary of state ; and if it fail, service may be made on such secretary : Nev. 1887,44.

In New York such appointment is optional only : N.Y. Civ. P. 432.

And such corporation shall constitute and appoint such an agent, who shall reside in the place or county in the state where the business of said corporation shall be carried on : Wash. 1886, p. 88 ; Cal. 1871-2,826 ; Dak. Civ. C. 569 ; Mo. 1891, p. 75 ; Oka. 1246.

So, in each place or county : Ore. 3276-7.

And maintain a public office where proper books, etc. are kept : Mo.

Every foreign corporation which shall appoint an agent in any place in the state for

the purpose of carrying on business under this act shall record with the secretary of state " a duly executed appointment of the agent appointed to reside at the principal place of business, duly authorizing him to accept service of process : Wash. 2481 ; Dak. Civ. C. 569 ; Ind. 3022-5 ; Cal.

And also with the county register : Dak. 1885,36.

Such incorporation or joint stock company shall also file at the same time, and in the same offices, a certificate under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary if there be one, certifying that the said corporation has consented to be sued in the courts of this territory, upon all causes of action arising against it in this territory, and that service of process may be made upon some person, a citizen of this territory, whose name and place of residence shall be designated in such certificate, and that process, when so served upon such agent, shall be taken, deemed, and held to be as valid to all intents and purposes as if served upon the company in the state or territory under the laws of which it is organized : Mon. G. L. 442 ; Uta. 2293.

Any corporation, subsisting by the laws of other states or countries, may constitute and empower, by letter of attorney, any person or persons to act as its agent in the state of Illinois, for the performance of such acts and doing such business as such corporation may be authorized to perform and do by the laws of the state of Illinois, and all instruments in writing, whether with or without seal, and all acts and things done or executed by such duly qualified agent, shall have the same force and effect, and be as valid and binding in law, as if executed and done in due form by law by the corporation for whom such agent may act ; and any scrawl or seal written or affixed by such agent so duly empowered shall be deemed and considered, in such particular instance, as the corporate seal of the corporation for whom such agent is authorized as aforesaid to act : provided, that this act shall not apply to railroad corporations : Ill. 32,66.

Before any foreign corporation shall begin to carry on business in this state, it shall, by its certificate under the hand of the president and seal of such company, filed in the office of the secretary of state, designate an agent, who shall be a citizen of this state, upon whom service, summons, and other process may be made. Such certificate shall also state the principal place of business of such corporation in this State : Ark. 1887, 135,1.

The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. The person designated may, from time to time, change his place of residence or office to some other place within the territory, by a writing executed by him and filed in like manner. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it : Mon. G. L. 443.

Any person acting as agent of a foreign corporation as aforesaid, neglecting or refusing to comply with the foregoing provisions as to agents, shall, upon presentation or indictment, be fined in any sum not less than fifty dollars : Ind. 3028 ; Ala. 1887,60 (\$500).

Any person who shall, directly or indirectly, receive or transmit money, or other valuable thing to or for the use of such corporations, or who shall in any manner make, or cause to be made, any contract, or transact any business for or on account of any such foreign corporation, shall be deemed an agent of such corporation, and be subject to the provisions of this act relating to agents of foreign corporations : Ind. 3026.

The foregoing section shall not apply to persons acting as agents for foreign corporations for a special or temporary purpose, or for purposes not within the ordinary business of such corporations, nor shall it apply to attorneys at law, as such : Ind. 3027.

Nor to drummers : Mo.

The officers, agents, and employees of such company, doing business in this state

without complying with the provisions of the preceding section, shall be personally liable to any resident of the state having a claim against such company, and, moreover, service of process upon either of said officers, agents, or employees shall be deemed a sufficient service on the company: Va. 1105.

And moreover such corporation shall, during the continuance of such failure, be deemed a non-resident of the state, and its property liable to attachment in like manner as the property of non-resident defendants; and if it fail so to comply within twelve months, it forfeits its charter: W. Va. 54,24.

Every such corporation which fails to comply with the provisions of this section shall be denied the benefit of the statutes of this territory, limiting the time of the commencement of civil actions, and any limitations in such statutes shall only run in favor of any such corporation during such time as shall be within the territory such person duly designated as aforesaid, upon whom such service can be made: Cal. 1871-2,826; Ida. 2653; Uta. 2293.

The agent of a foreign corporation carrying on business within the state contrary to the provisions of this chapter is made guilty of a misdemeanor: Io.; Wash. 2485.

Whenever any such corporation shall do any business of any nature whatsoever in this state, without having complied with the requirements of this act, it may be sued upon any cause of action in the parish where the right or cause of action arose, and service of process may be made upon the person or persons, firm or company, acting or transacting such business for such corporation, and each person or persons, company or firm, shall be deemed the agent of said corporation upon whom service can be made: La. 1890,249.

Should any agent so appointed absent himself from the county in which his appointment is filed for a period of three months from the time of his appointment consecutively, and no other agent be appointed for said corporation within four months after the commencement of such absence of such agent, the right to transact business by the corporation represented by such agent shall cease, and all acts or contracts performed or made thereafter shall, at the option of any person interested, be declared null and void: Ariz. 351.

NOTES. — <sup>a</sup> See § 8402, note *a*. <sup>b</sup> With the secretary of state: Pa. <sup>c</sup> With the county clerk: Ind.

**§ 8404. Reports.** Every such incorporation shall, annually, and within twenty days from the first day of September of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in [§ 8402], which report shall be filed in the office of the county recorder of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of the territory: Mon. C. L. 445.

**§ 8405. Holding Property.** Any domestic corporation transacting business in other states or foreign countries may acquire and convey such real property therein and such personal property as shall be requisite for such corporation for the convenient transaction of its business: N.Y. 1890,563,11; N.J. 1889,265.

Manufacturing corporations established under the laws of other states, which have complied with the provisions of chapter 330 of the acts of the year 1884 (§ 8403), may purchase and hold such real estate in this commonwealth as may be necessary for conducting their business: Mass. 1888,321,1. Compare Title III.

Any foreign corporation (foreign mining or manufacturing corporations complying with the above provisions, Tenn.), doing business in this state, may hold and purchase such real estate or interest in real estate within this state as is or shall be necessary for the use and corporate purposes of such corporation in the transaction of business within this state, and convey the same by deed or otherwise in the same manner as

though such corporation had been organized under the laws of and located within this state : N.Y. 1890,563,12 ; Tenn. 1995.

It shall be lawful for any corporation, duly organized under the laws of any state in which such corporation shall be located, to purchase under any foreclosure sale based upon any mortgage or mortgages owned by such corporation, or upon judgments or decrees obtained or rendered for debts due to it, or in any settlement effected to secure such debts, any of the lands lying within this state that may be covered by or subject to such mortgages, judgments, decrees, or settlements, and also to hold for a term not exceeding five years from the date of such purchase, and to convey such lands by deeds or otherwise, in the same manner as though such corporation had been organized under the laws of and located within this state : N.Y. 1890,563,13.

It shall not be lawful for any corporation against whom any order shall be made for publication, as aforesaid, after the entry of the said order in the minutes of the court, to grant, bargain, sell, alien, or convey any lands, tenements, or real estate in this state (in case the said summons issued out of the supreme court), or in the county in which the said summons shall have been issued (in case the said summons issued out of one of the inferior courts of common pleas in this state), of which said corporation shall be seised or entitled to at the time of making such order, until the plaintiff in the action shall be satisfied his legal demand, or until judgment shall be entered for the defendants; and the said action shall be and remain a lien on such lands, tenements, and real estate from the time of entering the said order for publication in the minutes of the court, and the said lands, tenements, and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation : N.J. Corps. 91.

It shall be lawful for foreign corporations to hold, mortgage, lease, and convey such real estate in this state as may be necessary for the purpose of carrying on the business of such incorporations in this state, or such as it may acquire by way of mortgage or otherwise in the payment of debts due to said foreign corporations; and any conveyances or mortgages to or by such foreign corporations of lands in this state, heretofore made, are hereby declared to be good and valid in this state, both in law and equity : N.J. Corps. 99.

It shall be lawful for any corporation incorporated, created, registered, or chartered by any foreign state, kingdom, or government, to hold, mortgage, lease, and convey such real estate in this state as may be necessary for the purpose of carrying on the business of such corporation in this state, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts due such corporation; *provided* such state, kingdom, or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States : N.J. Suppl. Corps. 5.

It shall be lawful for foreign corporations, created and organized for charitable or benevolent purposes, to hold, mortgage, lease, and convey such real estate in this state as may be devised or conveyed to them for the purposes of their creation, anything in the laws of this state to the contrary notwithstanding : N.J. Suppl. Corps. 6.

Foreign corporations having charter authority to engage in the business of acquiring, holding, mortgaging, leasing, and conveying real estate are hereby authorized to pursue the conduct of such business in this state, and to that end to acquire, hold, mortgage, lease, and convey real estate in this state : N.J. 1887,124.

No corporation other than such as shall have been incorporated under the laws of this state, nor shall any foreign government, potentate, or power, hereafter acquire and hold any real estate within this commonwealth directly in the corporate name, or by or through any trustee or other device whatsoever, unless specially authorized to hold such property by the laws of the commonwealth : Pa. Corps. 131.

It shall and may be lawful for any company incorporated under the laws of any other

state for the manufacture of any form of iron, steel, or glass, lumber or wood, or for the conversion, dyeing, and cleansing of cotton and other fabrics, or the manufacture of cotton, velvet, or other fabrics, or pyroligneous acids, acetate of lime, or charcoal by the process of destructive distillation, or the preparation of cattle hair for use, or the manufacture of carbon dioxide and magnesia and the products thereof, and compositions, articles, and apparatus from and in connection therewith, or for the manufacture of extracts out of wood, bark, leaves, or roots, or any other extract for tanning, dyeing, cleansing, or other purposes, to erect and maintain buildings and manufacturing establishments within this commonwealth, and to take, have, and hold real estate, not exceeding one hundred acres, necessary and proper for such manufacturing purposes: provided it may not employ more capital in such business in this state than the same kind of home corporations are allowed; and such real estate shall be taxable therein, and the corporation be taxable and make returns like similar corporations in the state: Pa. Corps. 132; 1891,31.

Any foreign corporation may invest or loan money in the state, and recover it, or sell or foreclose a mortgage, or purchase at a judgment sale, like private persons, subject to a provision that all realty so purchased shall be offered at public auction once a year: Ill. 32,67.

Subject to the usury law as citizens of the state: Ill.

No foreign or domestic corporation, established or maintained in any way for pecuniary profit of its stockholders or members, shall purchase or hold real estate in this state except as provided for in this act (and the laws of the state now existing): Ill. 32,26; N.M. 218.

Provided that nothing in this act contained shall be construed to prevent any foreign corporations from buying, selling, and otherwise dealing in notes, bonds, mortgages, and other securities, or from enforcing the collection of the same in the federal courts, in the same manner and to the same extent as is now authorized by law: Io. 1886,76,1.

Any foreign corporation which now is or hereafter may be created in whole or in part for the buying and selling of or dealing in lands in this state, or in the promotion of immigration to or the settlement or occupation of any lands in this state, may loan its funds to persons, whether its members or not, and take and enforce securities therefor, and may acquire, take, hold, convey, use, or occupy real, personal, or mixed property of every name and nature, within this state, and make contracts and transact all lawful business consistent with the objects and purposes of said corporation, and said corporation shall in all respects be subject to the laws of this state, and in all suits or proceedings by or against said corporation it shall be deemed for all purposes a domestic corporation.

Provided, that no such corporation shall acquire or hold at any one time more than one hundred thousand (100,000) acres of land in this state, and that all lands acquired by it shall be sold within twenty-one (21) years after their acquisition, except such lands as may be acquired by it under mortgage foreclosure or forfeiture of contracts for the sale thereof, which shall be disposed of by it within fifteen (15) years after such acquisition or forfeiture.

And provided further, said corporation shall appoint an agent or attorney residing within this state, upon whom all process may be served, which appointment shall be filed in the office of the secretary of state: Minn. 2649.

"And the state of Tennessee does hereby release its right of escheat by virtue of the alien origin of such corporations, or the alienage or non-residence of the shareholders of such corporations, or any of them:" Tenn. 1995.

The corporations, and the property of all corporations coming under the provisions of this article, shall be liable for all the debts, liabilities, and engagements of said corporations, to be enforced in the manner provided by law for the application of the property

of natural persons to the payments of their debts, engagements, and contracts: Tenn. 1996.

Nevertheless, the creditors who may be residents of this state shall have a priority in the distribution of assets, or subjection of the same or any part thereof to the payment of debts, over all simple contract creditors being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts, engagements, and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged, as against all debts which may be incurred subsequent to the date of their registration or rendition: Tenn. 1997.

No corporation doing business in this state, incorporated under the laws of any other state, shall be permitted to mortgage, pledge, or otherwise encumber its real or personal property situated in this state to the injury or exclusion of any citizen, citizens, or corporations of this state who are creditors of such foreign corporation: Mo. 1891, p. 75; Col. 260; N.M. 218.

No mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state, shall take effect as against any citizen or corporation of this state, until all its liabilities due to any person or corporation in this state at the time of recording such mortgage have been paid and extinguished: Mo.; Col. 260; N.M. 218.

Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, may acquire, hold, use, and dispose of in the corporate name all real estate necessary or convenient to carry into effect the objects of its incorporation and the transaction of its business, not to exceed five thousand acres of land, and also any interest in real estate, by mortgage or otherwise, as security for moneys due to or loans made by such foreign corporation in this territory, either prior to or after the passage of this act: provided, that no foreign corporations hereafter organized for the purpose of dealing in real estate, by buying and selling the same as a part of its business, shall be permitted to transact such business in this territory: provided further, such corporation shall file and record, or cause to be filed and recorded, in the office of the secretary of the territory a certified copy of its charter, or articles of incorporation, or memorandum of association, or certificate of incorporation, certified as provided in section 2480 of this code, and shall in all respects comply with the provisions of sections 2480 and 2481 of this code: Wash. 1886, p. 87.

Provided, that no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock has been subscribed: Wash. 1886, p. 85, § 1.

Any foreign corporation or corporation outside the state, claiming to own lands in Georgia in quantity as much as five thousand acres, must be incorporated by the laws of Georgia, and no such corporation shall own more than five thousand acres except upon this condition: Ga. 1675(a).

It is unlawful for any corporation not created under the laws of the United States or some state or territory to hereafter acquire or hold real estate within the limits of the United States, except such as may be acquired by inheritance or in good faith in the collection of debts heretofore created; provided, that this shall not apply to cases in which such right is secured to citizens or subjects of foreign countries by existing treaties: U.S. 1887,340,1.

No corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in any of the territories of the United States or in the District of Columbia: U.S. 1887,340,2.

No corporation other than those organized for the construction or operation of railways, canals, or turnpikes shall acquire, hold, or own more than five thousand acres of land in any of the territories of the United States; and no railroad, canal, or turnpike corporation shall hereafter acquire, hold, or own lands in any territory, other than as may be necessary for the proper operation of its railroad, canal, or turnpike, except such lands as may have been granted to it by act of Congress. But the prohibition of this section shall not affect the title to any lands now lawfully held by any such corporation: U.S. 1887,340,3.

All property acquired, held, or owned in violation of the provisions of this act shall be forfeited to the United States, and it shall be the duty of the attorney-general to enforce every such forfeiture by bill in equity, or other proper process. And in any suit or proceeding that may be commenced to enforce the provisions of this act, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights either of the United States or of the parties concerned in any such proceeding arising out of the matters in this act mentioned: U.S. 1887,340,4.

Upon complying with the provisions of this chapter, any association, company, or corporation organized or incorporated under the laws of any other state or territory, or any foreign country, shall be qualified and competent to take, receive, and acquire, either by purchase or by operation of law, and possess, own, hold, and dispose of, any and all kinds of real and personal property within this territory, and to prosecute and defend, and to appear, especially and generally, in any action in any court of or within this territory, and shall have, hold, and enjoy, except as hereinafter provided, the same rights and privileges as are now held and enjoyed or that may be hereafter held and enjoyed by any association, company, or corporation organized or incorporated under the laws of this territory; provided, no association, company, or corporation organized or incorporated under the laws of any foreign country shall take, receive, acquire, possess, hold, or own, at any one time, more than three hundred and twenty (320) acres of real estate, exclusive of mines and mineral lands and land necessary or convenient for milling, smelting, reducing, or working ores, or for manufacturing or commercial purposes: Ariz. 352.

**§ 8406. Books, etc.** The transfer agent in this state of any moneyed or other corporation existing beyond the jurisdiction of this state, whether such agent shall be a corporation or a natural person, shall at all reasonable times during the usual hours of transacting business exhibit to any stockholder of such foreign corporation, when required by him, the transfer-book of such foreign corporation, and also a list of the stockholders thereof (if in their power so to do): N.Y. 1890,564,56.

All corporations formed under the laws of this state, and holding property therein, and whose principal office for the transaction of business shall be located without the limits of this state, except corporations engaged in mining for iron, copper, mineral coal, silver, or other ores or minerals in the Upper Peninsula, are hereby required, when such corporations have branch offices in this state, to keep a list of all the stockholders of such corporation, and a transfer-book of the stock thereof, at their agency, and if they shall have more than one, then at some one of such agencies, to be designated by the officers of such corporation: Mich. 4900.

Any corporation not chartered by the laws of this state, which shall transact business therein, shall be deemed to hold and exercise franchises within this state, and shall be liable to suit in any of the courts of this state on any dealings or transactions therein: Md. 23,295.

**§ 8407. Powers.** Foreign corporations of other states may assign under the insolvency laws like home companies: Mass. 1890,321.

Any company organized as aforesaid may carry on a part of its business out of this



state, and have one or more offices and places of business out of this state ; provided, that the certificate of the organization of such company shall state what portion of its business is to be carried on out of this state, and in what town or city, county, and state its principal office or place of business out of this state is to be situated, and also in what other state or states, territory or territories, of the United States, and in what other countries, it proposes to carry on operations, and shall also state the name of the town or city and county in which the principal part of the business of said company within this state is to be transacted, and such town or city or county within this state shall be deemed to be the town, place, and county in which the operations and business of the company are to be carried on, and its principal place of business within this state : N.J. 1889,265.

Such of said corporations as shall engage in the mining of coals, iron ore, or other minerals, and in the manufacture of iron and other metals, shall have the right to construct and maintain roads, bridges, canals, tramways, telegraph lines, and railroads between their mines and their places of manufacture, and for purposes of inlet or outlet to or from any railroad now or hereafter to be constructed, or to any river or waterway at the point or place most convenient for its operation and its business ; and for this purpose such corporation may purchase or acquire the necessary rights of way by contract with the owner or owners of the said lands on which the right of way is desired : Tenn. 1999.

All corporations coming under these provisions shall, in good faith and truly, within one year after filing with the secretary of state the certified copy of the charter or articles of association as hereinbefore provided, begin and proceed with the business described in the said charter or articles of association so filed, and shall in good faith continue the same under the powers of said corporation in this said charter or articles of association as in this article declared ; it being a chief object of this article to secure the opening and development of the mineral resources of the state, and to facilitate the introduction of foreign capital ; and upon the failure of any such corporation to commence in good faith to develop and work some portion of its property within this state within one year after filing its said charter or articles of association in the office of the secretary of state, all rights and privileges conferred by this article shall lapse and become void and of no effect : Tenn. 2000.

Any corporation obtaining and having these privileges, may establish towns, villages, or settlements for the use and residence of its employees and others, on any lands acquired by it, and until the population is sufficiently large for the formation of municipal corporations in any of such towns or villages may establish such regulations for the government thereof as shall not be inconsistent with the laws of this state : Tenn. 2001.

And no foreign corporation established or maintained in any way for pecuniary profit of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the law of this state under which it may come, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business : Mo. 1891, p. 75.

Nothing in this act contained shall be so construed as to give to any foreign corporation or corporations any other or further rights, powers, or privileges than may be acquired or exercised by corporations incorporated under the laws of this state ; but only so as to give to foreign corporations the same rights, powers, and privileges, on a compliance with the laws of this state, as may be acquired or exercised by corporations incorporated under the laws of this state : Ore. 8407. See also § 8410.

**§ 8408. Reorganization.** No foreign corporation doing business in this state shall be permitted to effect a reconstruction, by liquidation or otherwise, nor shall any such reconstruction or liquidation take effect as against any citizen of this state, unless all the rights, shares, and interests of any citizen of this state shall have been or shall be

protected, and the stock interests of any citizen of this state in such corporation shall have been or shall be fully recognized, and in its original condition, without diminution in number, amount, or face value : Col. 1891, p. 99.

§ 8409. **Taxation.** (Compare § 8267.) The said corporation shall be liable for taxation in all respects the same as natural persons resident in this state, and the property of its citizens is or may be liable to taxation ; but to no higher taxation, nor to any other mode of valuation for the purpose of taxation ; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufactures in this state or otherwise : Tenn. 1998.

A statement must be filed with the secretary of state, duly sworn to, of the proportion of the capital stock of the said corporation which is represented by its property located and business transacted in the state of Missouri ; and such corporation shall be required to pay into the treasury of this state, upon the proportion of its capital stock represented by its property and business in Missouri, incorporating taxes and fees equal to those required of similar corporations formed within and under the laws of this state : Mo. 1891, p. 76.

When the company is not incorporated in this state, but is doing business through an agent, it shall be subject to all the provisions of preceding sections (see Art. 826), except that it shall not be assessed on its capital stock, but shall be assessed on all its property owned, held, or due in this state, whether it consists in real or personal estate, money, bills of exchange, bonds, notes, or accounts, or other evidence of debt : La.D. 3256.

#### **Art. 841. Suits.**

§ 8410. **General Liability.** Foreign corporations (having property in the state, Mass., Mo., Dak.) are, in most states, liable to be sued (1) in the same manner as individual non-residents : Mass. 105,28 ; Mich. 8137 ; Md. 23,295 ; Mo. 2538a ; Fla. 34,22.

(2) They "may sue or be sued by corporate name in the state : " Me. 46,22 ; Miss. 1042 ; Ariz. 352.

(3) In the same manner as corporations of the state : N.Y. Civ. P. 1779 ; Dak. ; S.C. C. P. 155.

They may be attached in the same manner as individual non-residents : Me. ; Mass. ; Mich. 8143 ; Mo. ; Ga. 3281 ; Miss. ; Fla.

Foreign corporations may always be attached (i. e. without other reason, or any special cause, as required in ordinary cases of attachment ; see Part IV. Vol. III.) : N.Y. Civ. P. 636. And so in most of the states.

Or garnished or trustee : R.I. 1891,929.

And executions may be levied in the same way : Me.

Corporations created by any other state, having property in this commonwealth, shall be liable to be sued, and their property shall be subject to attachment in like manner as residents of other states having property in this commonwealth are liable to be sued and their property to be attached : Mass. ; Fla. 34,22.

But such foreign corporation cannot maintain an action founded upon an act, or upon any liability or obligation, express or implied, arising out of, or made or entered into, in consideration of any act which the laws of this state forbid a corporation or any association of individuals to do, without express authority of law : N.Y. Civ. P. 1779 ; Wis. 3207. See also § 8407.

But when, by the laws of this state, any act is forbidden to be done by any corporation, or by any association of individuals, without express authority by law, and such

act shall have been done by a foreign corporation, it shall not be authorized to maintain any action founded upon such act, or upon any liability or obligation, express or implied, arising out of or made or entered into in consideration of such act : Mich. 8136 ; Minn. 5556.

An action against a foreign corporation may be maintained by a resident of the state, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only : —

1. Where the action is brought to recover damages for the breach of a contract made within the state, or relating to property situated within the state, at the time of the making thereof.

2. Where it is brought to recover real property situated within the state, or a chattel which is replevied within the state.

3. Where the cause of action arose within the state, except where the object of the action is to affect the title to real property situated without the state : N.Y. Civ. P. 1780.

A foreign corporation created by the laws of any other state or country may prosecute in the courts of this state, in the same manner as corporations created under the laws of this state, (1) upon giving security for the payment of the costs of suit, in the same manner that non-residents are required by law to do : Mich. 8135.

(2) Except as otherwise specially prescribed by law : Wis. 3207 ; Minn. 5555.

Suits may be brought in any court of this state, or before a justice of the peace, against any corporation not incorporated under its laws, but deemed to hold and exercise franchises herein, or against any joint stock company or association doing business in this state, by a resident of this state, for any cause of action ; and by a plaintiff not a resident of this state when the cause of action has arisen, or the subject of the action shall be situated, in this state ; and process in such suits may be served as provided in the preceding section [§ 8301], and also upon any agent of such corporation or joint stock company or association ; and in case of service of process on an agent, notice shall be left at the principal office : Md. 23,297.

Any corporation claiming existence under the laws of any other state, or of any country foreign to the United States, found doing business in this state, shall be subject to suit here to the same extent that corporations of this state are by the laws thereof liable to be sued, so far as relates to any transactions had in whole or in part within this state, or any cause of action arising here, but not otherwise : Tenn. 1887,226,1.

Any corporation having any transaction with persons or having any transaction concerning any property situated in this state, through any agency whatever acting for it within the state, shall be held to be doing business here within the meaning of this act : Tenn. 1887,226,2.

An action against a corporation created by or under the laws of any other state, government, or country may be brought in the circuit court : —

1. By any resident of this state, for any cause of action.

2. By a plaintiff not a resident of this state, when the cause of action shall have arisen, or the subject of the action shall be situated, within this state. S.C. C. P. 423.

**§ 8411. Procedure.** In all suits or actions hereafter to be brought in any court of record of this commonwealth against any foreign corporation or body corporate, not holding its charter under the laws of this commonwealth, every judgment, verdict, or award rendered against such corporation shall be final and conclusive, unless the said defendants, in addition to the usual proceedings in cases of appeal, shall give good and sufficient bail : Pa. Corps. 99.

In case any such corporation, after the service of any such writ as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey

the command of any such writ, when issued upon any judgment, order, or decree of the supreme court, court of chancery, or any of the circuit courts of this state, and served as aforesaid, within the time prescribed by such writ, the said courts shall have power, and authority is hereby given them, to enforce such writs by attachment against the property and estate, goods and chattels, rights and credits of such corporation, that may be found within this State : N.J. Suppl. Corps. 83.

§ 8412. **Venue.** An action against a foreign corporation may be brought in any county (1) in which there is property of or debts owing to the defendant, or where such defendant is found. If the defendant is a foreign insurance company, the action may be brought in a county where the cause, or some part thereof, arose : Wy. 2419.

(2) In which it has an agent : Fla. 34,17 ; 162,23.

When a corporation incorporated by the state has its principal office outside of the state, or its principal officers reside outside of the state, such company may be sued in any county where its works are situated, or adjoining thereto, or where the director, manager, or other officer of such company shall reside : Pa. Corps. 98.

§ 8413. **Service.** Where the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent : N.Y.<sup>a</sup> Civ. P. 432 ; O. 5406 ; Minn. 1891,79 ; Kan. 80,70 ; Neb. 2,75 ; Ark. 4982 ; Cal. 10411 ; Nev. 3051 ; Col. 1891, p. 32 ; Wash. 63 ; 1891,58,3 ; Ida. 4144 ; Wy. 2433 ; S.C. C. P. 155 ; Ariz. 712 ; Fla. 162,20 & 25.

Or upon the president, secretary, cashier, or other head thereof : N.Y., Minn., Nev., Wash., S.C.

Failing such service, by publication : Wash. ; Wy. 2435 ; S.C. ; Ariz.

But such service can be made in respect to a foreign corporation only when it has property in this state, or the cause of action arose therein : N.Y. ; Minn. 1891,79 ; Dak. 1883,102 ; Ore. 56 ; Wash. 63-4 ; S.C. C. P. 155,156 ; or when such service shall be made within this state personally upon the president, treasurer, secretary, or duly authorized agent thereof : Ore., Dak., Wash., S.C. And compare § 8410.

If there be an attorney or officer designated for service of process under § 8402, service may be on such attorney : N.Y. Civ. P. 432. So, of course, in other states.

In all personal suits or actions hereafter brought in any court of this state against any foreign corporation or body corporate not holding its charter under the laws of this state, process may be served upon any officer, director, agent, clerk, or engineer of such corporation or body corporate, either personally or by leaving a copy thereof at the dwelling-house or usual place of abode of such officer, director, agent, clerk, or engineer, or by leaving a true copy of such process at the office, depot, or usual place of business of such foreign corporation or body corporate, and such service shall be good and valid to all intents and purposes : N.J. Corps. 88.

In case the sheriff or other officer shall return such summons "not served" or "not summoned," and an affidavit shall be made, to the satisfaction of the court, that process cannot be served as mentioned in the eighty-seventh section of this act, then the court shall make an order directing the defendants to cause their appearance to be entered to the said action, on or before the first day of the next term of the said court, a copy of which order shall, within twenty days, be inserted in one of the public newspapers printed in this state, for at least six weeks, and a copy of the same order shall also be posted up within the time aforesaid in three public places in this state, as shall be ordered by the said court, for at least six weeks, and if the defendants shall not appear within the time limited by such order, or within such further time as the court shall appoint, then, on proof made of the due publication of such order, the court, being satisfied of the truth thereof, shall order the clerk to make an appearance for the defendants, and thereupon the action shall be further proceeded in as if the said defendants had caused their appearance to be entered to the said action : N.J. Corps. 90.

In all proceedings in any of the courts of this state against any foreign corporation or body corporate not holding its charter under the laws of this state, in any matter requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary, or other head officer of such corporation or body corporate, or upon any director thereof, either personally or by leaving a copy thereof at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney or solicitor, superintendent or manager of such corporation, and such service shall be good and valid to all intents and purposes; *provided*, that this act shall only apply to or affect the service of writs of mandamus or prerogative writs hereafter to be issued in proceedings or actions hereafter to be commenced or instituted: N.J. Supp. Corps. 82.

Suits against foreign corporations may be served upon any officer, agent, or engineer, or by leaving a certified copy at the office or usual place of business: Pa. Corps. 99.

On the presiding officer, the cashier, the secretary, or the treasurer thereof (or upon the operator or agent in charge of any office or place of business of any telegraph company), or if there be no such officer (or operator or agent of such telegraph company), or none can be found, such service may be made on such other officer or member of such corporation, or in such other manner, as the court in which the suit is brought may direct: Mich. 8137.

Process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent: Tenn. 1887,226,3.

Where the defendant is a corporation or joint stock company, organized under the laws of any other state or country, and having an office or doing business in this state, by delivering a copy of the writ and petition to any officer or agent of such corporation or company in charge of any office or place of business, or if it have no office or place of business, then to any officer, agent, or employee in any county where such service may be obtained: Mo. 2017.

In any suit against a foreign private or public corporation, joint stock company, or association, or acting corporation or association, citation or other process may be served on the president, vice-president, secretary, or treasurer, or general manager, or upon any local agent within this state: Tex. 1223a.

When the defendant is a foreign corporation, and has an acknowledged agent in this territory, service may be made on such agent, or, if no such agent is found, on any person in its employ or who has any of its property in charge: Uta. 3208.

In actions against foreign corporations doing business in the district, all process may be served on the agent of such corporation, or person conducting its business, or, in case he is absent and cannot be found, by leaving a copy at the principal place of business in the district, and such service shall be effectual to bring the corporation before the court: D.C. 790.

If no such agent in the county, upon any stockholder: Col.

When the person on whom the service is to be made is a foreign corporation, having no managing or business agent, cashier, or secretary within the territory, and the fact appears by affidavit to the satisfaction of the court or a judge thereof, or a probate judge, and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may make an order that the service may be made by the publication of the summons: Ida. 4145.

NOTE. — "If there be no attorney appointed under § 8402.

§ 8414. **Removal to United States Court.** Every foreign corporation now doing or transacting, or that shall hereafter do or transact, any business in this state, or acquire any right, title, interest in, or lien upon real estate in this state, that shall transfer

or cause to be transferred from any court of this state to any court of the United States, save by regular course of appeal after trial in the state courts, any action commenced by or against such corporation in any court of this state by or against any citizen or resident thereof, or that shall commence in any court of the United States in this state, on any contract made in this state or liability accrued therein, any suit or action against any citizen or resident of this state, shall thereby forfeit all right and authority to do or transact business in this state, or hold real property or liens thereon; and all contracts between such corporations and citizens or residents of this state, made after the passage of this act, shall be rendered void as in favor of such corporation, but enforceable by such citizen at his election: Ind. 3029; Minn. 3152-3, 3156, 3158.

Any foreign corporation sued or impleaded in any of the courts of this state upon any contract made or executed in this state, or to be performed in this state, or for any act or omission, public or private, arising, originating, or happening in the state, who shall remove any such cause from such state court into any of the federal courts held or sitting in this state, for the cause that such corporation is a non-resident of this state, or a resident of another state than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued or authority granted to such corporation to transact business in this state; such forfeiture to be determined from the record of removal, and to date from the date of filing of the application on which such removal is affected [effected]; and whenever any corporation shall thus forfeit its said permit no new permit shall be issued to it for the space of three months, unless the executive council shall, for satisfactory reasons, cause it to be issued sooner: Io. 1886,76,3.

Where, by the general or special laws of this state relating or in any way appertaining to any foreign corporation, it is provided in substance or effect that in suits and proceedings upon causes of action arising in this state, in which such corporation shall be a party, such corporation shall be deemed to be a domestic corporation: Minn. 3152.

§ 8415. **Statutes of Limitation.** (See also § 8402.) Any foreign corporation doing business continuously in this state, and having constantly an officer or agent resident herein, on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions, the same as domestic corporations: Me. 1889,166.

§ 8499. **Index to Statutes applying to Particular Classes of Corporations.** There is a mass of legislation applying to the more unusual kinds of business corporations, and above all to corporations not for profit, which forms no part of the scope of this work. Nevertheless, for the convenience of lawyers, and as showing in a general way what varieties of objects have thus been provided for in the general laws of the several states, an index to such statutes has been appended, which is believed to be nearly complete. But it is always to be remembered that in other states, as well as in those mentioned hereunder, these classes of corporations may be included under the general law, and the provisions of § 8010 of this book should be carefully compared.

For railways, manufacturing companies, telegraph companies, trusts, etc., see the subsequent titles to this book. See also § 8010, Exceptions.

**I. General Classes.** (For Municipal Corporations, see next volume.)

“Voluntary:” Ind. 3502-3517.

Corporations not for profit, generally: Col. 367-371; Ida. 2760-6.

Joint stock associations: N.Y. 1854,245; 1867,289 & 937; 1868,290; 1881, 599; 1885,505. See also Art. 810.

**II. Internal Improvements: Ariz. 235.**

Turnpike companies, plank roads, etc.: R.I. Ch. 159; N.Y. 1890,566,IX.; N.J. sub v.; Pa. sub v.; O. 3823-6; Ind. 3624-3695o; Wis. 1865-1895; Minn. 3098-3126; Md. 23,233-4; Tenn. 611-621; 1934-1957; Mo. 2690-2715; Ark. 1891,67; Cal. 5512-5523; Col. 305-307; Mon. G. L. 487,491; Wy. 526-531; Ala. 1613-1651; N.M. 1891,44.

Ferry companies: Pa. Bridge & Ferry Cos.; N.Y. 1890,566,1; Mass. Ch. 108; O. 3849; Tex. 642-4; Cal., Wy., Ida. (see Bridge); N.M. ib.

Bridge companies: R.I. ib.; N.Y. ib.; Pa. Bridge & Ferry Cos.; O. T. 2, Ch. 6; Ind. 3528-3564; Kan. 23,293; Neb. 1,16,29-36; Md. 23,86-94; Tex. 642-4; Mo. 2803-2807; Cal. 5528-5531; Ida. 2694-6; Wy. 538-540; Oka. 1180.

Canal companies: Mass. Ch. 108; Pa. Canal Cos.; N.J. Railroads & Canals; Ind. 3565-3579; Ill. Ch. 20; Neb. 1,16,158; Tenn. 628; Cal. (see Water); Ida. (see Water); Fla. 34,7.

Water power companies: Mich. 3874-3895; N.J. Suppl. Corps. 38-49; Io. 1236-1240.

Dams across streams: Ind. 4118-4129.

Ditches for water for mines, mills, and irrigation: Col. 1891, p. 96; Code 308-315; Mon. G. L. 477-81; Wy. 532-6; N.M. 1887,12.

Flume companies: Col. 316-319; Mon. G. L. 477,481,484,487; Ida. (see Bridge); Wy. 537.

Tunnels (mining): Mon. G. L. 478-9.

Levee companies: Tenn. 1846-1850.

Docks and harbors: Tex. 644a-f, i.

Companies for improvement of navigable streams: O. 3854; Ind. 3502-17; 1891,156; Mich. 3820-3873g; Kan. 23,249-9. And harbors: Ind., Mich.

Aqueducts: Me. Ch. 54; Mass. Ch. 110.

Oil and gas wells: Ind. 1891,156,166.

Natural gas companies: Pa. 1885,32.

Mineral springs: Ind. ib.; 1889,60; 1891,156; N.M. 226.

Natural gas: Ind. ib.

Pipe line companies: N.Y. 1890,566,V.; Pa. Pipe Line Cos.; O. 3878-3880; Ind. 1891,109; Mich. 3724-3751f; Col. 1891, p. 94.

Docks and wharves: N.Y. 1853,117; N.J. Suppl. Corps. 71-75; O. 3840.

"Storehouse:" N.J. ib.

**III. Municipal Improvements.**

For water works: Vt. 3580-8; Ch. 164; Pa. Gas & W. Cos., N.Y. 1890, 566,VII.; O. T. 2, Ch. 8; Ind. 3580-8; 4200-3; Mich. 3110-3127, 3895a; Wis. 1780; Md. 23,246-7; Tenn. 1958-1972; Mo. 2793-2802; Tex. 629-630; Cal. 5548-5552; Wash. 2447-9; Ida. 2710-3; Ga. 1889, p. 184.

Cemeteries: Me. 55,11; Vt. Ch. 164; N.Y. 1,18,4,D; N.J. Cemeteries; O. T. 2, Ch. 9; Pa. Burial Grounds, 1891,61 & 106; Ind. 3589-3596; 1891,156; 3502-3517; Mich. 4728-4796; Wis. 1452a-1455a; Io. 1091-1094; Minn. 2711-2723; 2860-2905; Kan. 23,256-260; Neb. 1,16,167-171; Md. 23,105-109; Tenn. 1973-1987; Tex. 639-641; Cal. 5608-14; Nev. 1045-1056; Ore. 3320-7; Col. 379; Wy. 566-80; S.C. 1886,288,19; Ala. 1694-1701; D.C. 594-604.

Companies for protecting and preserving dead bodies: O. 3884.

Cremation societies : Mass. 1885,265.

Hydraulic companies : O. T. 2, Ch. 8 ; Ind. 3696-3707.

Electric companies : Wis. 1791b ; Tenn. 1787-8.

Gas companies : Mass. 106,75-78 ; 1885,240 ; N.J. Gas Cos. ; Pa. Gas & W. Cos. ; O. T. 2, Ch. 7 ; N.Y. 1890,566,Vl. ; Mich. 4169-4181b ; Wis. 1780-1 ; Kan. 23,245-6 ; Md. 23,110-1 ; Tenn. 1789-1794 ; Mo. 2793-2802. Tex. 629-30 ; Cal. 5628-32 ; Nev. 1072 ; Col. 330-2 ; Ida. 2787-91. Including electric lights : N.Y., N.J., Md.

Electric light, heat, and power : Mass. 1883,221 ; Ct. Ch. 245 : N.J. Suppl. Corps. 68-70 ; Mich. 4182-4195.

Shade trees : Ind. 1891,156.

Parks, etc. : N.Y. 1861,149 ; 1872,248 ; 1888,293 ; O. 3868-3870 ; Wy. 566.

Fire, hose, hook and ladder, etc. : Vt. ib. ; R.I. Ch. 160 ; N.Y. 1873,397 ; N.J. Fire Depts. ; Ind. 3502-3517 ; 1891,156 ; Minn. 2711-2723 ; Wy. 566-80 ; S.C. 1886,288,19 ; Fla. 1883,3468.

Firemen's relief : O. 3850-2 ; Mich. 4795-4799 ; Minn. 2727 ; Neb. 1,16, 40-53 ; Mo. 2885-2891.

Soldiers' monument companies : N.Y. 1866,273.

#### IV. Land.

" Land companies " (simply) : Ala. 1889,126.

Real estate companies : N.Y. 1853,117 ; 1881,351 ; Pa. Corps. 52,54 ; Ind. 3502-3517 ; 1891,156 ; Mich. 3782-3801 ; Cal. 5639-48 ; Neb. 1891,16.

Building, loan-fund, and savings : N.H. Ch. 166 ; Me. 47,132-8 ; Mass. Ch. 117 ; N.J. Building & Loan Associations ; Pa. 1891,175 ; O. 1891, p. 469 ; Ind. 3407-3420d ; Ill. 1891, p. 90 ; Wis. 2009-2014b ; Io. 1184-7 ; Minn. 2409-2447 ; 1889,236 ; 1891,131 ; Neb. 1891,14 ; Del. V. 17,147,6 ; W.Va. 54,25-29 ; N.C. 2294-2300 ; Dak. 1885,34 ; Wash. 1890,4 ; 1891,105 ; Mon. G. L. 635-669 ; Wy. 1891,86 ; S.C. 1885,28 ; 1890,439 ; Uta. 1890,12 ; Ala. 1553-6 ; Fla. 1887,5709 ; N.M. 1889,108 ; 1887,9 ; Oka. 1220-1238.

Building associations : N.Y. 1853,117 ; Pa. Build. Assoc. ; O. 3833-8 ; Tenn. 1742-1757 ; Mon. G. L. 629-634.

Land and building : Ida. 2796-2805.

Camp meeting : Ind. 3421-7.

Summer homes, camp meeting, and other assemblies : Mich. 3983d6-3983f.

" Avenue " companies : O. 3822.

Fencing : Ind. 3465-3489.

Horticultural : Mass. Ch. 114 ; Ind. 3490-2 ; 1891,156 ; N.Y. 1855,425 ; Mich. 2315-2322 ; Tenn. 1973-1987.

Town building : Ind. 3493-3501 ; S.D. 1890,53 ; N.M. 226.

Sewerage companies : O. 3871-5 ; Kan. 23,300-1 ; Tenn. 1906-1912.

Draining lands, levees, etc. : Ind. 1889,67 ; Del. 17,147,5 ; S.C. 1562-1576.

County agricultural : Wy. 644-6 ; Oka. 1217-9.

Irrigation : Uta. 2403-2427 ; N.M. 1887,12.

Summer resort associations : Mich. 3983g4-3983h5 ; Wy. 566.

Driving parks : Wis. 1779.

Immigration : Tenn. 1801-1805 ; 2004 ; Ark. 1013-1022.

Land purchasing and improvement companies : N.J. Land Imp. ; Mich. 3801a-r.



Mutual building and loan associations: Mich. 3981a-9; Kan. 23,268-278; Mo. 2808-2820; Wy. 1890,29; Wis. 1889,525; 1891,469; Ala. 1553-6.

Building and leasing companies: Mich. 3892-3.

Building and homestead companies: Md. 23,95-104; La. 1888,151.

Proprietors of lands, wharves, and real estate held in common: N.H. Ch. 154; Me. Ch. 56; Mass. Ch. 111; Ct. Ch. 147.

Land dealing and building companies: Mich. 3983b2-3983c3; 1891,60.

Exposition building associations: Mich. 3983c4-3983d5.

Agricultural: Me. Ch. 58; Mass. Ch. 114; Vt. ib.; N.Y. 1855,425; O. 3692-3713; Ind. 3502-3517; 1891,156; Mich. 2298-2314; 2313-2327; Wis. 1456-1467; Io. 1091-4; 1103-1121; Minn. 2759-86; Tenn. 1973-1987, 1991; Mo. 326-341; Cal. 5620-2; Ida. 2775-8.

Fruit companies: O. 3883.

Homestead companies: N.Y. 1872,820; Ill. 32,78-91; Neb. 1,16,145-148; Cal. 5557-5566; Ida. 2720-9.

To improve the breed of horses: N.Y. 1854,269; Mich. 2331a9-2331b4; 2331e-2331e9; Tenn. 1973-1987.

Of cattle: Mass. Ch. 115; N.Y.; Mich.; Ind. 1891,156.

Or other domestic animals: Mass. ib.; Vt. ib.; N.Y. 1857,776; 1874,288; 1891,213; Mich. 2331b5-2331d9.

"Community land companies" (Spanish grants): N.M. 1891,86.

"Poultry and pet stock:" Mich. 1891,55.

Improvement of public grounds: Mass. 1885,157.

Growers of mint and other essential oil plants: Mich. 2331a1-8.

## **V. Transportation. Railroads. (See Title II.)**

Corporations for the use of steam wagons on common roads: Nev. 1057-1060.

Railroad equipment companies: Wis. 1791c.

Transfer and omnibus: Tenn. 1930-3.

Navigation companies: Me. Ch. 52; N.Y. 1890,566,II.; Ind. 4099-4117; Mich. 3752-3775; Ark. 992-1001; Ga. 1689bb—vv; Ala. 1655-8; Fla. 34,7.

Steamboat or packet companies: Ind. 4130-4142; Tenn. 1913-5; S.C. 1885,29.

Common carrier companies: O. 3838-9.

Street railway companies: Mass. Ch. 113; N.J. Suppl. Horse Railways; Ind. 4143-4161; Ill. Ch. 66; Wis. 1862-1884a; 1891,387; Tenn. 1920-5; Neb. 1,72,7; Cal. 5497-5511; Ala. 1603-1612; 1887,94.

Telegraphs: Mass. Ch. 109; Me. Ch. 53; Vt. Ch. 163; Ct. Ch. 245; N.Y. 1890,566,VIII.; N.J. Tel. Cos.; Pa. Tel. Cos. 1891,198; O. T. 2, Ch. 4; 1891, p. 493; Ind. 4162-4180; Wis. 1778; Md. 23,222-232; Tenn. 1927-9; Mo. 2716-2733; Cal. 5536-5541; Col. 326-329; Ida. 2700-3; Mon. G. L. 480-7; Wy. 541-2; Uta. 2294-2314; Fla. Ch. 193; Ala. 1652-4; Miss. 1065-70. See Art. 895.

Telephone: Mass. Ch. 109; Vt.; Ct. ib.; N.Y. 1890,566,VIII.; Ind. 4181-4192; Mo. ib.; Ida. ib.; Uta. 2428-37.

Ferry companies (see under II.): N.Y. 1890,566,I.; N.J. Suppl. Corps. VII.; Pa. Bridge, etc.; O. 3849; Tex. 642-4; Cal. (see Bridge); Ida. (see Bridge); Wy. ib.

Tramway companies : N.Y. 1890,566,IV.

Stage-coach companies : N.Y. 1890,566,III.

Transportation companies : O. 3877.

Elevated tramways : N.Y. ; Ill. 32,68-75 ; Mich. 3565b ; Nev. 1061-1063.

Union railway stations : N.Y. 1882,273.

Express companies (see § 8846) : Vt. Ch. 163 ; Ct. Ch. 144 ; N.M. 1891, 82,81.

Subways for electric wires, etc. : O. 1891, p. 390.

Forwarding and commission companies on rivers, wharf-boats, etc. : Ind. 1891,156.

"Cheap transportation lines : " Nev. 906-910.

Cable roads, either surface or elevated : Mich. 3399a-c.

#### VI. Manufacturing Companies. (See Title III.)

Salt manufacturing companies : Mich. 4026-4028.

Mining or smelting companies : Mich. 4029-4066 ; 4064a-4064d ; 4075-4126 ; 1891,139.

Mining : Wy. 525 ; Col. 1891, p. 99 ; Ala. 1557-1572.

Breweries : Tenn. 1758-1765.

Provision and packing companies ; Tenn. 1875-1879.

Manufacturing companies : Ind.

Mining companies : Pa. Mining Cos. ; O. 3862-7 ; Ind. ; Md. 23,144-156 ; Cal. 5584-92 ; Nev. 826-829,244-312 ; Col. 320-5 ; Mon. G. L. 492-4 ; Ala. 1557-1572 ; Oka. 1162-1179.

Quarrying : Ala. 1557-1572.

Iron manufacturing companies : Pa. sub v.

#### VII. Business.

"Buying and selling merchandise : " Ind. 1891,156.

Trading companies : Pa. sub v.

Printing and publishing : Mich. 4196-4200 ; Tenn. 1887-1890.

Newspaper and book publishing : Mich. 4201-4205 ; 4205a-4205g4.

Pawnbrokers : Tenn. 1880-1886.

Cultivating and manufacturing sugar from cane or beets : Mich. 2328-2331.

Warehouse companies, elevators, etc. : Mich. 3776-3781 ; Kan. 23,279-292.

Rafting and booming companies : Mich. 3896-3923 ; Mo. 2892-2914 ; Ark. 1891,60 ; Nev. 1064-1071 ; Wash. 1890, p. 470 ; Ida. (see Bridge) ; Wis. 1891,422.

"Log-driving : " Wis. 1777-1777b ; Minn. 2633.

Tobacco warehouse companies : Ind. 4193-9.

Mining and importing or exporting guano and fertilizers : N.Y. 1857,546.

Opera : Pa. Corps. 54 ; Tenn. 1926-9. Or theatre : Tenn. ib. ; Wy. 566.

Slaughtering : Mass. Ch. 107.

Market : Pa. ; O. 3858-3861.

Drove or stock yard : Pa. ; O. 3876 ; Tenn. 1916-9.

Wrecking companies : O. 3882.

Importing live stock : Ind. ib.

Elevator companies : N.Y. 1853,117 ; O. 3841 ; Mich. 3983a-b1.

Automatic electric fire-alarm : Mich. 1891,85.

Hotel companies: N.Y. 1874,143; Pa. Corps. 54; Ind. 3502-3517; 1891, 156; Mich. 3983a-b1; Tenn. 1795-1800.

To encourage inventors: Wis. 1781.

Public halls: Ind. 3502-17; 1891,156; Wy. 566.

### VIII. Banking.

Banks: N.H. Ch. 163; Mass. Ch. 118; Me. Ch. 47; Vt. Ch. 160; R.I. Ch. 153,154; Ct. Ch. 108, 109; N.Y. 1882,409; N.J. Banks; Pa. Banks; Ill. Ch. 16a; Mich. 3208a-3208g5; 1891,10; Wis. 2015, *et seq.*; 1889,523; 1891, 329; Io. 1886,72; 1878,18; Minn. 2303-2354; Neb. 1889,37; Va. 1154-73; 1181-4; W.Va. 54,75-81; N.C. 2286-7; Tenn. 1725-1741; Mo. 2743-2767; Ark. 1023-1034; Cal. 5300; 1875-6,729; Nev. 946-7; Col. 271-280; 1885, p. 51; N.D. 1890,23; S.D. 1891,27; Mon. G. L. 514-531; Wy. 1888,36 & 88; 1890,31 & 81; Uta. 2494-2519; S.C. 1343-1352; 1885,114 & 201; 1887, 410; Ga. 1466-1496; Ala. 1887,57; 1521-1530; Fla. Ch. 35; 1889,3864; N.M. 1884,36; La. 275-317; 1888,150.

"Banking companies:" Pa. Banking Cos. "Bank Cashiers and Private Banks"; N.H. Ch. 164.

Safe deposit: N.J. Safe Dep. Cos.; Pa. Corps. 53; Ind. 3502-3517; 1891, 156; Wis. 1791d; Minn. 2693-2709; Mo. 2836-2848; Col. 294-305.

Trust companies: N.H. 1891,23; N.Y. 1887,546; 1891,374; O. 1891, p. 407; Ill. 32,129-147; Mo. 1891, p. 99; N.M. 1887,68; Col. 1891, p. 102.

Trust, deposit, and security companies: Mass. 1888,413; Ct. Ch. 108; N.J. Supp. Safe Dep. Cos.; Mich. 3251a-g; 1891,126; Wis. 1891,263,425; Minn. 2693-2709; Tenn. 1732-1741; Col. 294-303; Wy. 1890,81; Territories: U.S. 1890,1246.

Money loaning and investing societies: Mich. 3252-3284.

Savings banks (see Title V.): N.H. Ch. 165; Mass. Ch. 116; Me. Ch. 47; Vt. Ch. 161; R.I. Ch. 153; Ct. Ch. 110; N.J. Savings Banks; Ind. 1891,41; Wis. 1876,384; Io. 1874,60; Minn. 2355-2408; Kan. 23,261-267; Md. 23, 218-221; Va. 1174-80; Tenn. 1725-1731; Mo. 2743-2767; 2849-2872; Nev. 948-974; Col. 281-293; Mon. G. L. 532-563; Wy. 1890,81; N.M. 1887, 68; Ariz. 283, 295; Territories: U.S. 1890,1246.

Savings and loan associations: O. 3797-3821; Mich. 3961-3981; Mo. 2808-2820; 2849-2872; Cal. 5571-9; Nev. 948; Ariz. *ib.*; Territories: U.S. 1890, 1246.

Foreign and home surety companies: Ind. 3420e-3420u; Ill. 32,99-102; Minn. 2710; Neb.; Tex. 1891,112. (See generally in Title IV., Insurance.)

Loan, trust, or guaranty associations: Uta. 1890,70.

Mortgage loan or investment companies: Mass. 1888,387; Ct. Ch. 113.

There are usually state banking departments or commissioners, having supervision of banks, savings banks, trust companies, etc.: Pa. 1891,190.

### IX. Business Societies.

Boards of Trade: N.Y. 1877,228; N.J. Suppl. Boards of Trade; O. 3827-3832; Ind. 3518-3527; Mich. 3802-3811; Wis. 1782; Minn. 2634-7; Cal. 1865-6,499; D.C. 605-617.

Business men's associations: Mich. 3819a-h.

Merchants and traders' associations: Mich. 3819i-m.

Lumbermen's exchanges: Mich. 3812-3819.

"Farm laborers' associations:" O. 3843-8.

Mechanics' institutes: Cal. 1865-6,469.

Co-operative associations for pecuniary profit: Ill. 32,103-128; Mich. 3925-3944; 3960a-3960f8; Wis. 1786b; Minn. 2683-2692; Kan. 23,302-4; Tenn. 1772-1784; Cal. 1878-8,883.

Co-operative and workingmen's unions: N.Y. 1867,971.

Builders' exchanges: Mich. 1891,28.

## X. Other Societies.

In general, lodges and societies: Mass. Ch. 115; N.Y. 1855,368; 1866,317; N.J. Suppl. Fraternal Soc.; Ind. 3502-3517; 3816-3850; 1891,156; Mich. 4472-4577; 4604-4609; 1891, Chaps. 97, 120, 136, 173; Wis. 2002-2008; Io. 1091-1094; Minn. 2711-2723; Neb. 1,16,165-166; 1891,17; W.Va. Ch. 55; Ky. p. 772; Tenn. 2014-19; 1973-1987; Ark. 1023-1034; Nev. 1004-1019; N.D. 1890,72; Wy. 566-80; S.C. 1886,288,19; La. 1890,50.

"To organize masonic lodges, royal arch chapters, commanderies of Knights Templar, councils of royal and select masters, lodges of perfection, councils of Princes of Jerusalem, chapters of Rose Croix, consistories of Princes of the Royal Secret, subject to the regulations of their respective grand bodies, according to the constitutions and usages of said masonic fraternity. Also the ancient order of Jolly Fellows and the Emmet Monument Association:" Wy. 589.

Societies of marksmen: N.J. Rifle Soc. (Supp.); Shooting Soc.; Mich. 4803-4810; Wis. 1779a.

Gymnastic associations: Mich. 4811-4816; Tenn. 1973-1987.

Yachting, hunting, boating, and rowing associations: Mass. Ch. 115; Mich. 4817-4823; 1891,59.

Skating and ornamental park associations: Mich. 4824-4842.

G. A. R.: Minn. 2749-2752.

Associations of professions: Neb. 1,16,155-157.

Secret societies: Neb. 1887,18.

"Uniformed volunteer companies:" Md. 23,245.

Jockey clubs: Tenn. 1841-1845.

Mechanics' associations: Mich. 3924-3934.

Labor associations: Mass. 1888,134; Mich. 3934a-o; 1891,104.

Knights of Labor: N.J. 1889,187; La. ib.

Trades' unions: Mich. 3945-9; Io. 1091-4; La. ib.

Patrons of husbandry, etc.: N.J. Granges (Suppl.); Ind. 3380-4; Mich. 2332-2340; Io. 1091-4; Ark. 1023.

Farmers' Alliance: La. ib.

Fish and game: Mass. 106,74; Vt. Ch. 164; N.Y. 1874,288; N.J. Suppl. Game; O. 3853.

Military companies: Ind. ib.; Wy. 566-80; Mich. 1891,124.

Clubs (social): N.Y. 1865,368; Tenn. 1973-1990; N.J. Social Clubs (Suppl.).

Clubs (political): N.Y. 1886,236.

Alumni associations: N.Y. 1882,268.

Bar associations: N.J. Bar Assoc. Suppl.; N.Y. 1887,317; Mich. 4402-4406.

"Lyceums:" Io. 1091.

Veterinary: Mich. 1891,56; N.J. sub v.

Sons of Veterans: Mich. 1891,153.

County societies for encouragement of agriculture, manufactures, and mechanic arts: Mich. 1891,177.

Equal (woman's) suffrage associations: Mich. 1891,191.

"Athletic:" Mass. Ch. 115; N.J. 1890,264.

Boat clubs: N.J. Boat Clubs.

Bicycle: N.J. 1890,264.

"Corporations not for pecuniary profit" may apparently be organized for any purpose whatever: Ill. 32,29-34.

#### **XI. Religious and Charitable.**

Educational and religious: Mass. Ch. 115; Vt. 3664; Pa. 1891,183; Ind. 3433-3464; 3614-3623; Mich. 4373-4387; Wis. 1784; Io. 1095-1102; Kan. 23,254-5; Neb. 1,16,40-53; Md. 23,205-217; Del. C. 39; Mo. 2821-2835; Col. 372-8; Mon. G. L. 670-6; S.C. 1886,288,19; Ala. 1694-1701; Ga. 1677.

Religious: N.H. Ch. 152; Vt. Ch. 164; Ct. Ch. 128,129; N.Y. 1813,60; N.J. sub v.; Pa. sub v.; O. 3772-3796; Ill. 32,35-49; Wis. 1787; 1990-2001c; Minn. 2787-2859; Tenn. 2006-13; Tex. 637-8; Mo. ib.; Dak. Civ. C. 385; Cal. 5593-5603; Nev. 1028-1035; Col. 372-8; Ore. 3295-3317; Uta. 2288-2291; Wy. 566-80; Miss. 1071-2; N.M. 237-241; D.C. 533-544.

Total abstinence: Ill. 32,76-7.

Churches: Me. 1891, 55; Vt. ib.; Ct. Ch. 129; Ind. 3597-3613; Mich. 4617-4727; 1891,132; Ill. 32,35-46; Nev. 995-1003; Ore. 3295-3317; Wash. 2450-4; Wy. 566-80; 581-8; Uta. 2438-43; S.C. 1886,288,19; Ga. 1636a; Ala. ib.; Fla.

Agriculture, mechanics, physical or mental development; Mass. ib.; Ore. 3295-3317.

Temperance: R.I. Ch. 160; N.J. ib.; Wash. 2450-4.

Religious, social, and benevolent: S.C. 1886,288,19; Ariz. 332-346.

Polytechnic associations: Mich. 4429-4435.

Industrial and charitable schools: Mich. 4598-4603; Wis. 1786; Mo. 2873-2884.

Libraries: Mass. Ch. 115; Me. Ch. 85; Ind. 3782-3815; N.Y. 1796,43; 1853,395; 1875,343; 1886,666; 1887,313; Mich. 4407-4412; Wis. 1783; Io. 1091-1094; Minn. 2711-2723; W.Va. Ch. 55; Tenn. 1973-1987; Wash. 2450-4; Wy. 566-80; N.M.

"Health associations:" Mich. 4800-4802.

Benevolent and fraternal societies: Mass. Ch. 115; Minn. 2728-2748; Mo. 2821-2835; S.D. 1890,52.

Missionary: Me. Ch. 55; Mass. Ch. 115; Vt. Ch. 164; Tenn. 1973-1987.

Charitable societies: Ind. 1891,156; Neb. 1,16,149-154; Tex. 637-8; Dak. Civ. C. 385; Nev. 1028-1037; Uta.; Col. 380-3; N.M. ib.; Fla. Ch. 36.

Education or instruction: N.J. Learning; Tenn. 1785-1788; Tex. 631-6; Mon. G. L. 619-628.

Universities, academies, and schools: O. 3726-3771; Ind. 3434-6; 1891, 156; Ill. Ch. 144; Io. 1091-1094; Minn. 2711-2723; Kan. 23,247-253; Neb. 1,16,15-28; 1,16,160-162; Ark. 1001-1012; Cal. 5649-51; Wash. 2450-4; Wy. 1891,22,566-580; Ga. 1676a; Fla. ib.; 1887,3710; N.M. 237-241; D.C. 519-532.

Literary and scientific: Mass. Ch. 115; R.I. Ch. 160; Vt. ib.; N.J. Lyceums; Ind. 3502-3517; 1891,156; Mich. 4413-4421; 4436-4441; Io. 1075-

1102; Minn. 2711-2723; Neb. 1,16,40-53; Ark. 1023-1034; Mo. 2821-2835; Nev. 1020-7; Wash. 2450-4; N.M. ib.

"Historic:" Mass. ib.; N.J. sub. v.; Mich. 4422-4428; Nev. 1020-7; Wy. 566.

Educational: Mass. ib.; Wy.; D.C.

For educating nurses: N.Y. 1888,391.

Asylums, hospitals, etc.: N.J. Hospitals, Suppl.; Ind. 3502-3517; 1891,156; Mich. 4590-4598; Wis. 1785,1786a; Minn. 2724-2726; W.Va. Ch. 55; Tenn. 1973-87; Nev. 1037-1044; Wy. 566-80.

Charitable, benevolent, scientific, literary, etc.: N.Y. 1,18,4,C,3; Mich. 4578-4589; Io. 1095-1102; Minn. 2711-2722; Tenn. 1973-1987; Ark. 1023-1034; Mo. 2821-2835; Nev. 1028-1037; Ore. 3295-3317; Wash. 2450-4; Cal. (see Religious); Uta. 2288-91; Ga. 1676b; La. D. 677-682; N.M. 232-6; D.C. 545-552.

Benevolent: Mass. ib.; N.J. Benevolent Assoc.; Pa. Beneficial Soc.; Col. 372-8; Ala. ib.

Charitable: N.J. ib.; Col. 380-3.

Joint stock companies for religious, educational, or charitable purposes: Col. 384-396.

Cruelty to children, prevention of: N.Y. 1,18,4,C,4; N.J. 1890,34; Minn. 2753-8.

Cruelty to animals, prevention of: N.Y. 1,18,4,C,5; O. 3713-3725; Mich. 4610-4616; Minn. 2753-2758; Uta. 2520-7; La. 1888,19.

Young men's Christian associations: N.Y. 1,18,4,C,6.

Fine arts, music, etc.: Mass. ib.; Vt. ib.; R.I. ib.; N.J. Music; N.Y. 1860, 242; Mich. 4442-4471; Tenn. 1973-1987.

Mechanical arts; Vt. ib.; Ind. 3502-3517; 1891,156; Tenn. ib.; La. D. 739.

"Social and literary:" R.I. ib.; Ala. 1702-4.

Relief of orphans, disabled ministers, missionaries, and their widows: Vt. Ch. 164; Ind. 1891,68.

"Medical:" Mass.; Mich. 4388-4401; Ark. 1023.

"Monumental:" Mass.; N.J. Monuments.

"Antiquarian:" Mass.; Wy.

"Promoting morality:" Mass.

"Railroad relief:" Mass. 1882,244; 1886,244.

Soldiers' aid: Vt. ib.

"Museums:" N.J. ib.

Exhibitions, fairs, etc.: N.J. sub v.; Pa. Suppl. sub v.

## **XII. Insurance.** (See Title IV.)

Insurance: Territories: U.S. 1890,1246.

Commercial agencies, credit and guaranty associations: S.Dak. 1890,54.

Real estate title guaranty companies: Mass. 1884,180; Wis. 1771; Ind. 1891, 156; Col. 1887, p. 234.

Foreign surety companies: Neb. 1,16,174-188; Del. V. 18,694; Cal. 1885, 114; S.Dak. 1890,58. (See also under VIII.)

Boards of underwriters: Wis. 1922-5.

Surety companies: Col. 1889, p. 447; Ill. 32,100-102.

Assessment insurance companies: Mass. 1885,183.

**XIII. Miscellaneous.**

Detective: Ind. 3428-3432; Neb. 1,16,189-197.

Apprehending horse thieves: Vt. Ch. 164; N.J. Protection Soc.; Suppl. Pursuing Soc.; Ill. 32,92-99; Mich. 4843-4859; Io. 1091-4; Ind. 3431; 1891,81.

Militia and military companies: Ind. 1891,156.

To establish and maintain parks or grounds for the exhibition of all kinds of live stock, agriculture, mechanical and mineral products, whether the products of this state or not, with the right to offer and award premiums: Wy. 566.

**XIV. Co-operative** (see also under IX.): Mass. 106,72-73; Ct. Ch. 118; Pa. sub v.

Mutual savings, investment, and benefit associations: Ill. 1891, p. 88; Nev. 948-974.

Suburban homestead and villa park associations: Mich. 3983f1-3983g3.

Mutual benefit and insurance: Tenn. 1973-1987; Ark. 1023-1034; Pa. 1891,86; Mich. 1891,196; Wis. 1891,418; Wy. 566; Ala. 1547.

Co-operative banks: Mass. 1882,251; 1885,121; 1887,216.

Fraternal beneficiary organizations: Mass. 1888,429.

**TITLE II. — RAILWAYS.****CHAPTER I. — INCORPORATION.**

NOTE TO TITLE. — \* Applies to railroad corporations created under *special act*. † Applies only to such as are created under *general law*.

**Art. 850. General Provisions.** (Compare Vol. I., Art. 434.)

§ 8500. **Construction of Title.** (A) Railroad companies organized in the state shall be subject to the provisions of this title so far as consistent with their respective charters: Vt. 3299; Ct. 3454; Wis. 1829; Mo. 2665; N.C. 1982.

They are subject also to the provisions of the general and the stock corporation law: N.Y. 1890,565,4.

"This chapter shall be known as the railroad law:" N.Y. 1890,565,1.

They may not be formed under any other act: Col. 345.

(B) In other states the general law of corporations (see Title I.) applies to and includes railroad corporations: Io.; Minn. 2448; Kan. 23,5; Neb.; Del. Ch. 72; W.Va.; Ky. 56,2, pp. 767-769; Wash., Dak., Wy., La., N.M., Oka. For citations see § 8010 and compare § 8010 (A) Exceptions, and (B), (6). And its provisions in all states frequently apply.

(C) All railways are in fact incorporated under special acts: Del. Ch. 72.

So commonly in the southern states. See § 8510.

(D) All existing railroad corporations within this state shall respectively have and possess all the powers and privileges, and be subject to all the duties and liabilities and provisions contained in this chapter: W.Va. 54,67; Kan. 23,64; N.C. 1982, S.C. 1885,96,1 & 8; Fla. 39,42; N.M. 2727.

"Not inconsistent with the provisions of any charter:" Kan., N.C.

So, all railway companies created in the future: S.C. 1885,96,1. And railways consolidated or reorganized: Mich. 1891,52.

The phrase "railroad corporation," as used in these statutes, may be taken to embrace any company, association, corporation, or person managing, maintaining, operating, or in possession of a railroad, whether as owner, contractor, lessee, mortgagee, trustee, assignee, or receiver: Wis. 1861; Io. 1278; 1888,28,1; Minn. 507; Neb. 1887,60,1; W.Va. 54,82,(XII.); Mo. 2666; Ark. 1887,81,11; S.C. 1415.

The provisions of this act shall apply to the transportation of passengers and property, and to receiving, delivering, storage, and handling of property wholly within this state: Io. 1888,28,1; Minn. 507; Neb. 1887,60,1.

And shall apply to all railroad corporations and railway companies, express companies, car companies, sleeping-car companies, freight or freight line companies, and to any common carrier or carriers engaged in this state in the transportation of passengers or property by railroad therein, and shall also be held to apply to shipments of property made from any point within the state to any point within the state, whether the transportation of the same shall be wholly within this state or partly within this and an adjoining state or states: Io. 1888,28,1.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, receiver, trustee, or other person operating a railroad, whether owned or operated under contract, agreement, lease, or otherwise, and the term "transportation" shall include all instrumentalities of shipment or carriage: Io. 1888,28,1; Neb.; Cal. 1880,45,14; N. Dak. 1890,122,1; U.S. 1887,104,2.

This act shall not be so construed as to authorize the formation of street passenger railway companies to construct passenger railways, under or by virtue of its provisions, in any city or borough of this commonwealth: Pa. R.Rs. 12.

So, this chapter does not apply to horse railways: Vt. 3322; Ct.; S.C. 1414. And see § 8499.

In construing this act, unless such meaning be repugnant to the context, or to the manifest intention of the legislature, the term "railroad company" shall include and be construed to mean any incorporated railroad company (or any express or transportation company, or any railroad bridge company, or any person or persons, lessee, assignee, trustee, receiver, partnership, joint stock company, or corporation, Kan.) engaged wholly, partially, jointly, or severally in laying out, constructing, owning, operating, using, or maintaining any railroad operated by steam, or any portion or part of any such railroad line. The word "person" shall include persons, partnerships, joint stock companies, or corporations: Kan. 84,129; S.C. 1414,1543.

So, the term railroad corporation shall include all companies and individuals now and hereafter owning or operating a railroad: N.H. 157,5; Mo. 825.

To the same effect as to trustees in possession, R.I. 158,42.

So this act applies to a road leased by another railroad: Ark. 1887,81,10; S.C.

And compare § 8722.

The term proprietors of a railroad shall include the corporation to which any railroad was originally granted, or into whose hands it has subsequently passed, the assignees or trustees to whom any railroad has been mortgaged for the security of debts, and any company or persons to whom it may have been conveyed: N.H. 157,4.

When a railroad laid out and constructed by one corporation is lawfully maintained and operated by another corporation, the latter shall be subject to the duties, liabilities, restrictions, and other provisions set forth in this chapter, respecting or arising from the maintenance and operation of such railroad, in the same manner as if it had been laid out and constructed by said latter corporation. When a railroad is lawfully maintained and operated by trustees, they shall in like manner be subject to the duties, liabilities, restrictions, and other provisions respecting or arising from the maintenance and



operation of such railroad which are attached to the corporation for whose stockholders or creditors they are trustees : Mass. 112,5 ; Me. 51,106.

Subject to amendment, repeal, etc. ; and they are subject to all general railroad laws, notwithstanding anything to the contrary in the original charters : Me.

The words "internal improvement," when used in this chapter, shall be construed to apply to and include railroads, canals, toll bridges, and turnpikes on which tolls are permitted to be charged and collected : W.Va. 54,75.

The provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property by railroad, under a common control, management, or arrangement for a continuous carriage or shipment from any point in the state to any other point in said state : Neb. 1887,60,1 ; N. Dak. 1890,122,1.

Nothing in this article shall apply to or authorize the construction of any elevated railroad, or of any other railroad except a surface road ; and no elevated railroad company shall be incorporated except under a special charter of the general assembly ; and no elevated railroad shall be constructed in or through the city of Baltimore, or in or through any of the counties of the state, except under a special charter of the general assembly : Md. 23,186.

Nothing in this chapter shall be construed to authorize the incorporation of any railroad company, the purpose and effect of which is to connect two other railroads, and thereby abandon as through routes any city or town of this state which is the terminus of either or both of said railroads, without the consent of such city or town : W.Va. 54,50,6.

All railroad companies doing business in this state under charters granted or laws passed by the State of Virginia or this state, are hereby declared to be domestic companies or corporations, and shall be treated as such in all cases : W.Va. 54,82c,XVI.

**§ 8501. Charter Necessary.** Railroads, being public highways, can be laid out, built, maintained, and put in operation only by virtue of express grants of the legislature, or of authority derived from them : N.H. 157,2.

Every railroad or portion of a railroad built in this state for public use, by itself or in connection with any other railroad, without charter or license from the general assembly first had and obtained, is declared to be a public nuisance : R.I. 158,25.

No private individual or association can construct a private railroad connecting with any railroad authorized by law of this state, with the Ohio or New York state lines, or with any railroad therein : Pa. R.Rs. 128.

**§ 8502. Pre-existing Companies.** "Nothing in this title shall affect rights or liabilities accrued previous to December 1st, 1850 : " Vt. 3304.

Any existing railroad company may acquire all of the powers or benefits conferred by this act, by filing an acceptance thereof in the office of the secretary of state, properly attested as the corporate act of such company : Ind. 3932 ; Neb. 1,16,85 ; Nev. 890 ; Ga. 1890, p. 64 ; Ariz. 330.

The acceptance of any part of this act shall be deemed and taken to be an acceptance of the whole act, and a surrender of the act under which such company may be organized ; and thereupon such company shall possess such powers so accepted, and be subject to the obligations and restrictions herein specified, as fully as it would have had and been if organized under this act : Ind. 3932 ; Nev.

Railroad corporations heretofore established in this commonwealth, whether by special act or under the general law (passed in the year eighteen hundred and seventy-two, or under the general railroad act of the year eighteen hundred and seventy-four, Mass.), shall have the powers and privileges, and be subject to the duties, liabilities, restrictions, and other provisions contained in this chapter which, so far as inconsistent with charters granted since the eleventh day of March in the year eighteen hundred

and thirty one (Dec. 17, 1841, S.C.), shall be deemed and taken to be in alteration and amendment thereof : Mass. 112,3 ; S.C. 1416. But nothing herein contained shall be construed to impair the validity of any special power heretofore conferred by charter or other special act upon a particular railroad corporation which had exercised such power before the first day of February in the year eighteen hundred and seventy-five, or to prevent the continued exercise thereof conformably, so far as may be, to the provisions of this chapter : Mass.

Railroads existing January 1, 1874, may adopt the constitution of 1873 by certificate in writing filed with the secretary of state, with the consent of the stockholders at a special election : Pa. R.Rs. 118.

Railroads previously existing may, through their owners, being United States citizens not less than nine in number, by filing articles of association as herein provided, acquire the rights, privileges, and franchises granted by this act : Minn. 2448.

" Any corporation of the class specified in section one of this title heretofore organized, or attempted to be organized, under former general laws, may conform their articles to the provisions of this title, and re-file the same with the secretary of state, as herein provided, and thereafter, without any other act or ceremony, shall become entitled to all the rights, benefits, and privileges conferred herein ; and all grants, transfers, and conveyances by the state, or any citizen or corporation, to any such corporation heretofore made, are hereby confirmed unto such corporation, and shall, upon the filing of their articles under this title, be deemed to accrue and inure to the benefit of such corporation as thus organized, without any other act or ceremony whatever : " Minn. 2449.

Every company which is governed by the act passed on the seventh day of February, eighteen hundred and seventeen, prescribing certain general regulations for the incorporation of turnpike companies, or by the act passed on the eleventh day of March, eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and every company which, since the first day of July, eighteen hundred and fifty, has been, or which hereafter shall be, incorporated to construct any work of internal improvement, shall be governed by the provisions contained in the forty-seventh chapter and in this chapter, so far as they can apply to such company without violating its charter : Va. 1185.

All laws of a general nature in relation to railroad corporations now in force in this state, so far as they are not inconsistent with the provisions of this chapter in relation to such corporations, shall remain in force and be applicable to the railroad corporations organized under this chapter ; and any railroad corporation incorporated by special charter, and now existing, may accept the provisions of this chapter and reorganize under the same without impairing any rights or privileges granted under its original act of incorporation ; subject, however, to the control of the legislature, as provided in the constitution of the state : W.Va. 54,70.

Any corporation, company, or body politic heretofore formed or organized and existing under any special act of the legislative assembly of the territory of Colorado, or under any of the general laws thereof, may come under and avail themselves of the privileges and provisions of this act, whenever any such company, corporation, or body politic shall file in the office of the secretary of state, and in the office of the recorder of deeds in the county or counties where such company or body politic is doing business, a certificate in writing, signed by the president and attested by the secretary of such company, corporation, or body politic, accepting the provisions of this act, and the questions of acceptance shall be adopted by a vote of two thirds of all the stockholders of said company, corporation, or body politic, expressed at a regular meeting of such company, corporation, or body politic, or at a meeting held for that purpose, which certificate shall express such vote : Mich. 1891,52 ; Col. 364.

The provisions of this act shall not in any manner impair the rights or lessen the lia-

bilities of corporations now in existence and heretofore created under the laws of the territory of Colorado, but such corporations are hereby recognized, and their incorporation confirmed; but nothing in this section shall be so construed as to relieve such corporations from hereafter complying with the provisions of this act, in all matters relating to the conduct, control, and management of any such corporation, or any of the affairs of such corporation: Col. 366.

**§ 8503. Repeal.** Nothing contained in this chapter shall be construed to impair the rights of the commonwealth as asserted or reserved in previous statutes: Mass. 112,6.

The provisions of this chapter, and the franchises, rights, powers, privileges, duties, and liabilities of railroad corporations established under this or any general statute, may be altered, amended, or repealed, and the legislature may annul or dissolve any such corporation: Mass. 112,6; Vt. 3323,R.

So, "the provisions of this title shall at all times be subject to alteration, amendment, or repeal" by the legislature: Vt. 3305,3323; N.J. R.Rs. 127; Pa. R.Rs. 13; Ind. 3933; Mich. 3395; Va. 1240; Col. 365.

And charters granted thereunder: Va.

Or any charters: N.C. 1981; S.C. 1424.

"In such manner, however, as to do no injustice to corporators:" Pa.

And the legislature may establish regulations, etc.: Col. See also §§ 8701, 8833.

But such alteration, repeal, or dissolution (1) shall not impair any remedy given against such corporation, its officers or stockholders, for liabilities previously incurred: Vt., Mich., N.C.

(2) "Shall not affect the rights of corporations organized under it: Mich.

(3) Shall not apply to corporations previously organized unless so specified: N.J.

If any company incorporated as aforesaid shall, at any time, misuse or abuse any of the privileges granted by this act, or by the special act of incorporation, the legislature may revoke all and singular the rights and privileges so granted to such company; and the legislature hereby reserves the power to resume, alter, or amend any charter granted under this act, and take for public use any road constructed in pursuance of such charter: provided that, in resuming, altering, or amending said charters, no injustice shall be done to the corporators; and that, in taking such roads for public use, full compensation shall be made to the stockholders: Pa. R.Rs. 31.

Except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are especially provided for in this chapter: Va. 1240.

**§ 8504. Renewal.** A term of duration of any railroad organization under any special act of the territory of Kansas wherein it is not fixed upon acceptance of this act, may be extended for the term of ninety-nine years from the taking effect of such special act: Kan. 84,96.

A corporation which has expired by lapse of time may be renewed by resolution, in writing, adopted by three fourths of the stockholders at a regular meeting, specifying the period of time for which it is renewed. Those desiring it must purchase the stock of those opposed at its current value, and certificate of such resolution and purchase must be filed with the secretary of state: Ill. 114,5; Tex. 4107.

Not for more than fifty years: Ill.

Such corporation may be renewed from time to time, in such manner as may be provided by law, for periods not longer than fifty years: Col. 334.

**Art. 851. Charters.**

§ 8510. **Special Charters.** In many states railroads are, in fact, always incorporated by special charter; such are Delaware, Virginia, West Virginia, Alabama, Mississippi. And commonly so in other states.

§ 8511. **A Petition** for a special charter must be accompanied with a map and profile of the road, and the report of a skilful engineer founded on actual examination, and by other proper evidence showing the character of the soil, manner of construction, general profile of the surface of the country, feasibility of route, and estimate of probable expense : Mass. 112,29.

§ 8512. **Contents.** The charter, act, or petition for incorporations must state :—

(1) The termini of the road : Me. 51,11 ; Kan. 23,7. "The location and route : " S.C. 1885,96,1.

(2) The estimated length : Me., Kan.

(3) The counties through which it is to run : Kan.

So, the towns : Me.

(4) Its general course : Me.

(5) Its name : S.C.

The names of the corporators : S.C.

(6) The capital stock, and how raised : S.C.

(7) The duration of the charter : S.C.

(8) A reference to this act by its title : S.C.

(9) Such special additions or exceptions thereto as the legislature may enact : S.C.

§ 8513. **Notice** must be published according to law, designating the intended route with such certainty as to give reasonable notice to all persons interested : Mass. 112,31.

The legislature may require further surveys, plans, and estimates besides those supplied therein : Mass. 112,31.

Petitions for the incorporation or amendment of railroads, water companies, bridges, etc., must further be advertised three weeks in newspapers in the localities affected : Mass. 1885,24 ; Vt. 129.

§ 8514. **Form of Charter.** The routes of railroads established by special charter, including branches and extensions, shall be fixed according to the provisions of sections forty and forty-one, except so far as the same may have been fixed by special statute : Mass. 112,33.

Every act of incorporation of a railroad company shall confine the road within the limits indicated by the application to the legislature, shall specify the towns through which it may pass, and shall further designate the route on which the road is to be made with as much certainty as possible in each case : Vt. 3325.

No franchise heretofore granted to construct a railroad, or to build or establish bridges or ferries, or operate any line of travel, and take tolls or fares therefor, shall hereafter continue to be or be construed to remain exclusive, and no like franchise hereafter granted shall be or be construed to be exclusive, unless in such grant heretofore made or hereafter to be made it be so expressly provided : N.J. R.Rs. 126.

§ 8515. **Powers and Liabilities of Promoters.** A railroad corporation shall be a body corporate and politic, from the passing of the act of incorporation, so far as to authorize such corporation, after its organization, to enforce the payment of subscriptions to its capital stock, and the performance of contracts for the conveyance of real estate for the purposes of the road, although such subscriptions and contracts may have been made prior to the organization : Vt. 3324.

§ 8516. **Opening Books.** The commissioners for opening books of subscription named in the act of incorporation shall open such books in such places and after such notice as a majority of them direct; which books shall be kept open until the capital stock is subscribed: Vt. 3326; Pa. R.Rs. 18; S.C. 1885,96,3.

When more stock is subscribed than the capital, the commissioners shall distribute it equally among the subscribers; but no share shall be divided, nor shall a greater number be allotted to a subscriber than he has subscribed for: Vt. 3327.

§ 8517. **Payment on Stock.** Five per cent must be paid at the time of subscribing if required by the commissioners, and security given for \$15 more per share, in such instalments as are ordered by the company: Vt. 3328.

Five dollars per share must be paid: Pa. R.Rs. 18.

When ten per cent on the stock, as provided by any special act of incorporation, has been subscribed, and five dollars paid as aforesaid, the said commissioners make certificate to the governor, who then creates the subscribers with those who shall thereafter subscribe into a body politic and corporate under the name designated: Pa. R.Rs. 19.

No corporation having a railroad of the gauge of three feet shall commence running its trains until its paid up capital stock is equal to at least one half of its cost, including equipment: Mass. 112,45.

Subscriptions for stock shall be payable absolutely, and no secret agreement, nor any understanding or condition not inserted in the terms of the subscription, shall affect the right of the corporation to enforce payment thereof: Vt. 3329.

§ 8518. **First Meeting.** As soon as practicable after the stock or such portion as is prescribed in the act of incorporation is subscribed, the commissioners to receive subscriptions shall give ten days' notice<sup>a</sup> of a stockholders' meeting by publication; and at such meeting directors shall be elected by the stockholders who attend either in person or by proxy: Vt. 3332; Pa. R.Rs.<sup>a</sup> 20.

The directors so elected then receive the moneys, books, and papers: Vt. 3332.

NOTE. — <sup>a</sup>Two weeks: Pa.

## Art. 852. General Law.

§ 8520. **Organization.** Any number of persons not less than ten (Me., Tex., Nev., Uta.), twenty-five (N.H., Mass., Vt., Ct., N.C.), thirteen (N.J.<sup>a</sup>), nine (Pa.), fifteen (Ind., N.Y.), five (Ill., Wis., Minn., Neb., Md., Mo., Ark., W.Va., Col., N.M., Ariz., Dak., Mon., Oka.), seven (Mich., Ala., N.J.<sup>a</sup>), three (Ga., Fla.), a majority of whom must be citizens of the state (N.H., Mass., Me., Vt., Md.; so all, Pa.), "either of this state or the United States" (Nev., Ariz.), being subscribers to the stock (Ind., Ark., Tex., Nev., Uta., Ala., Ariz.), two thirds being resident in the territory (Uta.), all being citizens of the United States (N.M.), may organize to form a railroad company under the general law: N.H. 156,1; Mass. 112,34; Me. 51,1; Vt. 3306; Ct. 3433; N.Y. 1890,565,2; N.J. R.Rs. 89; Pa. R.Rs. 1; Ind. 3885; Ill. 114,1; Mich. 3313; Wis. 1820; Minn. 2448; Neb. 1,16,72; Md. 23,158; W.Va. 54,31; N.C. 1932; Mo. 2542; Ark. 5420; Tex. 4099; Nev. 834; Col. 333; Dak. 1879,46,1; Mon. G. L. 677; Uta. 2315; Ga. 1689(a); Ala. 1573; Fla. 39,1; N.M. 2622; Ariz. 296; Oka. 1027.

NOTE. — <sup>a</sup>Seven, if the road be less than ten miles in length.

§ 8521. **Companies reorganized under the General Corporation Law.** (Compare § 8502.) Any citizens of the United States, not less than nine in number, being the owner or owners of any railroad within this state now or hereafter actually constructed for public use in the conveyance of persons or property, or organized for the purpose of maintaining and operating under lease or contract a railroad constructed for like public

uses, may, by making and filing articles of association as authorized by this act, acquire and enjoy the rights, privileges, and franchises granted by this act, and may, by filing in the office of the secretary of state a resolution of such corporation of its intent to construct or operate any branch line, become empowered to so construct and operate the same in connection with such main line, subject to the provisions of this act and the general laws of this state. Any such railroad corporation to be organized under this act may erect and maintain lines of telegraph along or over its lines of railroad, and charge a reasonable compensation for transmitting messages over the same : Minn. 2448.

§ 8522. **Articles.** The incorporators (§ 8520) make and sign articles of association : N.H. 156,2 ; Me. 51,1 ; Vt. 3306 ; Ct. 3434 ; N.Y. 1890,565,2 ; N.J. R.Rs. 89 ; Pa. R.Rs. 1 ; Ind. 3885 ; Ill. 114,2 ; Mich. 3313 ; Wis. 1820 ; Minn. 2450 ; Neb. 1,16,73 ; Md. 23,159 ; W.Va. 54,32 ; N.C. 1932 ; Mo. 2524 ; Ark. 5420 ; Nev. 834 ; Col. 333 ; Tex. 4101 ; Mon. G. L. 678 ; Dak. 1879,46,1 ; Uta. 2316 ; Ga. 1689(a) ; Ala. 1574 ; Fla. 39,1 ; N.M. 2623-4 ; Ariz. 296 ; Oka. 1027.

At the first meeting : Uta., Nev.

They are acknowledged like deeds of real estate : Pa., Neb., W.Va., Mon., N.M.

Before a justice : Md.

And certified by a clerk of court : Md.

And published : Minn. 2451 ; Ga. ; Fla.

And file them with the secretary of state<sup>a</sup> : N.H. 156,5 ; Vt. 3321 ; Ct. 3435 ; N.Y. ; N.J. ; Pa. R.Rs. 1 ; Ind. 3886 ; Mich. ; Ill. ; Wis. ; Minn. ; Neb. ; Md. ; N.C. ; Mo. ; Ark. ; W.Va. 54,33 ; Tex. 4103 ; Nev. 836 ; Dak. ; Mon. ; Uta. 2319 ; Ga. ; Ala. ; Fla. ; N.M. 2627 ; Ariz. 298 ; Oka. 1027.

Or a copy may be so filed : Ind. 3888.

A copy is filed with the auditor of accounts : Uta.

And a copy must also be recorded with the land record office in each county through which the railroad runs : Ill. With the clerk of each such city or town : N.H.

Of the county where the principal place of business is to be : Minn., Mon.

Who records them, and thereupon the subscribers become a corporation by the name specified therein : Ct., N.Y., N.J., Pa., Ind., Wis., Minn., Neb., Md., N.C., Ga., Fla., Ariz., Oka. See § 8526.

After the issue of the certificate of incorporation, the secretary of state must record, consecutively, the declaration, the proceedings of the meeting of subscribers, as certified by the judge of probate, the verified list of the subscribers and the affidavit thereto, and the certificate of incorporation : Ala. 1579.

When it is shown to the satisfaction of the commissioners that the requirements of this chapter preliminary to the establishment of a corporation have been complied with, and a sum (sufficient to pay all damages has in good faith been paid in cash to the treasurer and will remain in his office until drawn out for lawful expenditures, Mass.),<sup>b</sup> the railway commissioners (through their clerk, Mass.) indorse upon the articles or affix thereto a certificate accordingly ; and the directors thereupon file the articles with all the certificates with the secretary of the commonwealth : he shall record them and issue a certificate of incorporation : Mass. 112,44 ; Me.<sup>b</sup> 51,2-3.

So, the secretary of state issues a patent under the great seal : Wis. 1820 ; W.Va. 54,34 ; Tex. 4104 ; Dak. ; Uta. ; Ga. ; Ala. 1578 ; Fla. ; Oka.

A certified copy of such certificate is conclusive (presumptive, Vt., Neb.) evidence of the establishment of the corporation : Mass. 112,44 ; Me. 51,3 ; Vt. 3321 ; Neb. 1,16,7 ; Md. ; Mon. ; Uta. 2319 ; Ga. 1689(b) ; Fla. 39,2.

So, a copy of the articles so recorded and certified by the secretary of state is *prima facie* evidence of (1) the due formation, existence, and capacity of the corporation : Ct. 3436 ; of (2) the incorporation of such company and the facts

therein stated: N.Y. 1850,140,3; N.J. R.Rs. 91; Pa. R.Rs. 3; Ind. 3886; Ill. 114,4; Mich. 3316; N.C. 1934; Mo. 2545; Ark. 5422; Nev. 836; Uta.; Ga.; Fla.; N.M. 2629; Ariz. 298.

The directors shall cause a copy of the articles of association to be published in one or more newspapers in each county in which the road is proposed to be located, at least once a week for three successive weeks, and shall also cause a copy of said articles to be posted in each city or town in which the road is proposed to be located, at least three weeks before proceeding to fix its route: Mass. 112,37.

When the articles have been filed, the directors must apply to the railroad commissioners for a certificate that public convenience and necessity require the construction of the railroad. If refused, no further proceedings can be had, but the application may be renewed after one year: Mass. 1882,265,1.

The directors shall be subscribers to the articles of association, and a majority of them shall be inhabitants of this commonwealth: Mass. 112,36.

Such articles of association shall not be filed and recorded unless they are accompanied by the report, under oath, of a skilful engineer, founded on an actual examination of the route, showing the character and structure of the proposed road-bed, with its indications of rock or earth, cuttings, the manner in which it is proposed to construct said railroad, the general profile of the surface of the country through which it is proposed to be made, the feasibility of the route, and an estimate of the probable expense of constructing the same; a copy of which report shall be kept on file in the office of the secretary of this state: Ct. 3436.

And shall be published for one week in some newspaper printed and published at the capital of the state, or in some newspaper printed and published in the county where such corporation is organized: Minn. 2451.

This certificate must be submitted to a circuit judge of the county or a judge of the supreme court of Baltimore, and he shall certify upon it whether it is in conformity with the law: Md. 23,159. So, the supreme court; and it must certify, by referees, after a hearing, that public necessity required the road: N.H. 156,8. Compare §§ 8740, 8747. So, to the attorney-general: Tex. 4102.

NOTES. — <sup>a</sup>With the auditor: Uta. <sup>b</sup>Only the preliminary payment on the stock is required before certificate of incorporation; see below: Me.

**§ 8523. Contents of Articles.** The articles of association must set forth (1) the name of the corporation: N.H. 156,2; Mass. 112,35; Me. 51,1; Vt. 3306; Ct. 3434; N.Y. 1890,565,2; N.J. R.Rs. 89; Pa. R.Rs. 1; Ind. 3885; Ill. 114,3; Mich. 3313; Wis. 1820; Minn. 2452; Neb. 16,73; Md. 23,158; W.Va. 54,32; N.C. 1932; Mo. 2542; Ark. 5420; Tex. 4101; Nev. 835; Dak. 1879, 46,1; Mon. G. L. 678; Uta. 2317; S.C. 1885,96,1; Ga. 1689(a); 1883, p. 135; Ala. 1574; Fla. 39,1; N.M. 2623; Ariz. 297; Oka. 1027.

The corporate name assumed shall be one not in use by any other corporation in this commonwealth: N.H., Mass., Vt. It shall contain the words "railroad company" at the end thereof, and shall be changed only by act of the general court: N.H. 156,3; Mass. 112,36.

(2) The termini proposed: N.H., Mass., Me., Vt., N.Y., N.J., Pa., Ind., Ill., Mich., Wis., Neb., Md., W.Va., N.C., Mo., Ark., Tex., Nev., Col. 333, Dak., Mon., Uta., Ga., Ala., Fla., N.M., Ariz., Oka. "The location and route:" S.C. See § 8744.

The length of the road, as near as may be: N.H., Mass., Me., Vt., Ct., N.Y., N.J., Pa., Ind., Mich., Wis., N.C., Mo., Nev., Dak., Uta., Ga., Fla., N.M., Ariz., Oka.

(3) The name of each city, town, and county through or into which its route extends: N.H., Mass., Me., Vt., Ct., Md. Of each county: N.Y., N.J., Pa., Ind.,

Mich., Wis., Neb., N.C., Mo., Ark., Tex., Nev., Dak., Mon., Uta., Ga., Fla., Ariz., Oka.

(4) Its gauge: N.H., Mass., Me., N.Y.

Which shall be either 4 ft. 8½ in. or 3 ft.: Mass.

In narrow gauge, 3 ft. 6 in., or not less than 30 in. between the rails: N.Y. 1883,384; 1879,293. And compare § 8810.

(5) The amount of its capital stock (and see § 8600): N.H., Mass., Me., Vt., Ct., N.Y., N.J., Pa., Ind., Ill., Mich., Wis., Neb., Md., W.Va., N.C., Mo., Ark., Tex., Nev., Dak., Mon., Uta., S.C., Ga., Fla., Ala., N.M., Ariz., Oka.; "and how raised:" S.C.

And number of shares: Me., Vt., N.Y., N.J., Pa., Ind., Ill., Mich., Wis., N.C., Mo., W.Va., Tex., Dak., Ga., Fla., Ala., N.M., Oka.

"The amount actually subscribed and by whom:" N.M.

Which shall not be less than \$10,000 per mile: Mass., Ct., Vt., N.Y., N.J., Pa., Mo.; \$6,000, Me.; \$8,000, Mich.; \$5,000, N.C.; \$15,000, N.H. 156,4.

If both common and preferred stock, the amount of each: Wis., N.Y., Dak., Oka. And the rights and privileges of the latter: N.Y.

It "shall be the actual cost of constructing the road:" Md., Ark., Nev., Mon., N.M., Ariz.

Together with the cost of right of way, motive power, and every other appurtenance as estimated by competent engineers: Nev., N.M., Ariz., Ark., Uta.

Or, in narrow gauge, \$5,000: Mass., Mo. \$6,000: N.H.; Pa. R.Rs. 17. \$3,000: Me., N.Y. \$4,000: Mich.

The shares must be \$100 each: N.H.; Vt.; Ct. 3435; Mich.; Ariz.; Neb. 16,76. \$50: Pa. R.Rs. 28; Md. 23,162. So, not exceeding \$100 each: Nev., Uta. And not less than \$10: Nev.; Fla. 1889,3906. And see § 8600.

(6) The names<sup>a</sup> of the directors to act (*a*) until others are chosen: N.H.,<sup>a</sup> Mass., Me., Vt., Ct., Ind., Ill., Mich., Ark., Tex., Nev., Uta., N.M., Ariz.

(*b*) For the first year, and until others are chosen: Vt., N.Y., N.J., Pa., Wis., Ct., N.C., Mo., Dak., Ga., Fla., Oka.

And the name of a president: Pa.

The directors shall be at least nine in number: Mass., Ct., N.Y.; five, Me.; seven, N.H.; thirteen, N.J.<sup>b</sup>; six, N.C., Pa. From six to twelve, Pa.; five to fifteen, Mich.; five to thirteen, Wis., Mo., Dak., Nev., Uta., Oka.; three to thirteen, Ga., Fla.; five to eleven, N.M.

A majority must be citizens of the state: N.H.; Me.; Vt. 3315; Ct.; N.J.; Pa. R.Rs. 7. See § 8832.

In what officers or persons the government of the corporation and management of its affairs shall be vested: Col., Ill.

(7) Each associate shall subscribe to the articles his name, residence, address, and number of shares of stock he agrees to take: N.H.: Mass.; Me.; Vt. 3307; Ct. 3435; N.Y.; N.J.; Pa.; Ind.; Mich.; Wis.; W.Va.; N.C.; Mo.; Ark.; Nev.; Dak.; Uta. 2318; Ga.; Fla.; Ariz.; Oka.

But no subscriber shall be bound to pay more than ten per cent of his subscription unless the corporation is duly established: N.H., Mass., Vt.

So, the articles must set forth "the names and residences" of the incorporators: Ill., Col., Tex., S.C., Ala.

(8) The place of its principal office: Ct., N.Y., Ill., W.Va., Tex., N.M.

Which must be in the state: Ct. See § 8530.

(9) The number of years the company is to continue: N.Y., N.J., Pa., Ill., Mich., N.C., Mo., Ark., Tex., Nev., Col., Uta., S.C., N.M., Ariz.



"This corporation shall continue perpetually : " W.Va.

Which shall not be for more than fifty years, in the first instance : Ill. 114,5 ; Tex. 4106 ; Nev. ; Col. 334 ; Uta. ; Ga. 1689(u) ; N.M. ; Ariz. So, ninety-nine years : Ark.

There shall be annexed to such articles an affidavit of at least three of the directors therein named, that the signatures thereto are genuine, and that it is intended in good faith to construct or maintain and operate the railroad therein mentioned : Wis. 1820 ; Dak., Ga., Fla., Oka. And see § 8524.

The names of five commissioners to open books of subscription to the stock : Ark. 5420.

And, in addition, all matters required to be set forth in the articles of ordinary corporations (§ 8022) : Col., Minn. 2451. "The purpose for which it is formed : " N.M.

"Any other matter they may deem it desirable to state : " Ala.

"A reference to this act by its title : " S.C. 1885,96,1.

"Such special additions or exceptions to the provisions of this act as the general assembly may enact for the better carrying out the purposes of the corporation : " S.C.

NOTES. — <sup>a</sup> And residence : Me., N.J. <sup>b</sup> See § 8520, note <sup>a</sup>.

**§ 8524. Subscription Necessary.** Nor shall such articles of association be filed and recorded until at least five thousand dollars (\$1,000, N.Y., Mo., Ark., Tex., Nev., Uta., N.M. ; \$500, Mich. ; \$2,000, N.J. ; \$9,000, Pa.) of stock for every mile proposed to be made is subscribed thereto, and ten per cent (five per cent, Mich., Mo., Ark., Tex. ; the whole, N.J.) of such subscription paid in cash to the directors or the treasurer<sup>a</sup> named in said articles, nor unless there is annexed thereto an affidavit made by at least three (five, N.J. ; two, Mich. ; any of them, Uta.) of said directors<sup>b</sup> that the amount of stock required by this section has been in good faith subscribed, and the per cent in cash paid thereon as aforesaid, and (except in Mich., Ark., Uta., Tex., N.M.) that (1) it is intended in good faith to construct the road named in such articles : Ct. 3436 ; N.Y. 1890, 565,2 ; N.J. R.Rs. 90 ; Suppl. 14 ; Pa. R.Rs. 2 ; Mich. 3313 ; Mo. 2544 ; Ark.<sup>c</sup> 5420 ; Tex. 4100-3 ; Nev.<sup>a</sup> 834-5 ; Uta. 2316,2318 ; N.M. 2626. See also §§ 8525, 8527, 8601.

(2) That the subscribers to the articles are personally known to them : Uta.

The directors must deposit such money with the state treasurer, who pays it back to them in sums of \$2,000 for each mile that has had such \$2,000 expended upon it : N. J. Suppl. R.Rs. 14.

And a preliminary survey must be filed with the secretary of state : Ark.

In narrow gange, not exceeding three feet, \$3,000 per mile subscribed is enough : Pa. R.Rs. 17. So, \$500 : Mo.

When the amount of capital stock named in section 8523 has been subscribed in good faith by responsible parties, and at least ten per cent (five per cent, Me.) of the par value paid in cash (1) the directors (clerk and treasurer, Mass.) indorse upon the articles or annex their certificates setting forth these facts, and that it is intended in good faith to construct and operate a railroad (and also annex the certificate of publication, as in section 8513, and the several certificates fixing the route, Mass.), and shall present the same for inspection to the railway commissioners (and deposit in their office the report of the engineer and the map, Mass.) : Mass. 112,43 ; Me. 51,2. So in Maine, but only five per cent is paid in cash ; no map or certificate of route is required : Me. 51,2,3.

(2) The directors record the articles with the town clerks and the secretary of state : N.H. 156,5.

So, \$5,000 for each mile of the first twenty miles, if there are so many, of railroad proposed, and \$1,000 for each mile thereafter, must be subscribed, and ten per cent paid

in cash ; the directors indorse on the articles, as in Massachusetts, such fact, with affidavit of good faith, and the record is made with the secretary of state : Vt. 3308.

(\$50,000 in all, Ind.), or \$1,000 for each mile, must be subscribed before the articles can be signed, etc. : Ind. 3885 ; Ark. 5420 ; Ariz. 296. Compare also § 8525.

NOTES. — *a* It is paid to a treasurer to be named by the subscribers from among their number : Nev., N.M. *b* By the treasurer. *c* Such payment may be within two years after the filing.

§ 8525. **Opening Books.** When the articles of association are duly filed and recorded, the directors (subscribers, Md., S.C.) may open books of subscription to fill up such of the capital stock as has not been taken at such times and places as they deem expedient : Vt. 3312 ; Ct. 3437 ; N.Y. 1850,140,4 ; N.J. R.Rs. 92 ; Pa. R.Rs. 4 ; Ind. 3887 ; Mich. 3316 ; Wis. 1821 ; Md. 23,166 ; W.Va. 54,36 ; N.C. 1935 ; Nev. 837 ; Tenn. 1901 ; Dak. 1879,46,2 ; Mon. G. L. 683 ; Uta. 2321 ; S.C. 1885,96,3 ; Ga. 1689(c) ; Fla. 39,3 ; Ariz. 299 ; Oka. 1028.

So, the commissioners named in the articles shall open books, etc. : Ark. 5424 ; Neb. 1,16,80 ; Mon. So, three or more of the subscribers are commissioned by the secretary of state : Ala. 1575.

Every subscriber must pay ten per cent of his subscription at the time of subscribing, or it shall not be taken : Vt. 3312 ; Ct. ; N.Y. ; N.J. ; Pa. ; Neb. (see §§ 8501, 8524) ; W.Va. ; Md. ; Nev. ; N.M. 2625. See also §§ 8527, 8601.

So, five per cent : N.C. Two per cent : Ala. (See below.)

The books shall be kept open until \$7,000 per mile is subscribed, if the corporation shall so long exist : Ark.

Until all is taken : N.Y., Pa., Ga., Fla., Oka.

No subscription is binding on either party until accepted by the directors : Nev., Uta., Ariz.

Such company shall not commence the construction of its road until at least \$10,000 a mile is subscribed to the capital stock thereof by responsible persons : Ct. 3437.

Or, in the case of narrow-gauge roads, \$2,000 : N.Y. 1883,384.

And ten per cent thereof paid in : N.Y.

The directors of a company which has expended in the construction of its road ten per centum of its authorized capital, and has obtained actual *bona fide* subscriptions to its capital stock to the amount of at least twenty per centum thereof, may receive subscriptions to its capital stock payable in such instalments, dependent upon the completion of the whole or any part of its road so that cars may pass over the same, as its directors may deem expedient, and upon full payment thereof may issue certificates of stock therefor ; but no subscriber to the stock hereby authorized shall be entitled to any of the privileges of a stockholder until his subscription is fully paid, nor shall he for any purpose be deemed a stockholder until the happening of the contingency upon which the instalments on his subscription are made dependent : O. 3298.

A company which has begun and partly built its road, but is unable to finish and operate the same for want of means, may take subscriptions conditioned that the proceeds thereof shall not be used or applied upon the debts of the company ; and all money or material collected upon such subscriptions, and all material or implements purchased with such money, for the construction of the track, houses, depots, and rolling stock of the company, shall be exempt from execution or other process or proceedings for the payment of the debts of the company so long as such money, material, or implements are used or designed for the construction of such track, houses, depots, and rolling stock : O. 3299.

In case a greater amount of stock shall be subscribed than the whole capital required by such company, the directors shall distribute such capital stock, so subscribed,

as equally as possible among the subscribers ; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any one subscriber than by him subscribed for : Ind. 3887 ; Nev. 837 ; Uta. ; Ariz.

The incorporators named in the articles may open books for subscription of stock at the first annual meeting or thereafter, and commence work when a sufficient amount is subscribed to justify it, and the first instalment paid : Minn. 2453.

If these preliminaries are not complied with, the filing of the certificate is void : N.Y.

Such articles of association shall not be filed and recorded in the office of the secretary of state until at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto, and five per cent paid thereon in good faith, and in cash, to the directors named in said articles of association ; nor until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors named in said articles, that the amount of stock required by this section has been in good faith subscribed, and five per cent paid in cash thereon as aforesaid, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association as aforesaid ; nor until said directors shall pay to the secretary of state the sum of fifty dollars, which said sum shall be paid by the secretary of state to the state treasurer, and by him placed to the credit of the public school fund : N.C. 1933.

The commissioners must, within ninety days after appointment, open books of subscription to the stock, and give notice by publication in each county through which the railroad is to be built : Ala. 1576.

Upon the delivery of the subscriptions to such officer or person, he shall require of the subscribers whose subscriptions are payable in money, without the privilege of discharge in services or labor or property, the payment in cash of two per cent thereof ; and of the subscribers whose subscriptions are payable in money, with the privilege of discharging the same in stipulated services or labor or in the transfer or conveyance of property, contracts in writing signed by them, expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or to the transfer or conveyance of the property, at such time as the board of directors may appoint : Ala. 1578.

The officer or person to whom the subscriptions for stock have been delivered must make a list of the subscribers, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received money, the aggregate of the money received, where it is deposited, and from which of the subscribers he has received contracts in writing as hereinbefore specified. Upon the filing of such papers, the secretary of state must issue to the subscribers to the declaration, their associates and successors, a certificate of incorporation : Ala. 1578.

**§ 8526. Organization Completed.** When the articles of association are thus filed, the persons who have so subscribed and persons who become stockholders in the company (1) shall be a corporation in fact and in name by the name specified in such articles : Me. 51,3 ; Vt. 3309 ; Ct. 3435 ; N.Y. ; N.J. R.Rs. 89 ; Pa. R.Rs. 5 ; Ind. 3886 ; Ill. 114,4 ; Mich. 3313 ; Wis. 1820 ; Minn. 2451 ; Neb. 1,16,74 ; Md. 23,160 ; W.Va. 54,34 ; N.C. 1932 ; Mo. 2542 ; Ark. 5420 ; Tex. 4104 ; Nev. 836 ; Dak. 1879,46,1 ; Mon. G. L. 679 ; Uta. 2319 ; Ga. 1689(a) ; N.M. 2627 ; Ariz. 298 ; Okla. 1027.

For citations, see § 8522 ; and see also § 8700.

And shall possess the powers and privileges granted to corporations by this chapter : Mass., Wis., W.Va., N.C., Mo., Dak., Okla.

(2) "Shall be authorized to carry into effect the objects named in said certificate, in accordance with the provisions of this chapter : Md. 23,160 ; W.Va. ; Neb. ; Tex. 4105.

Upon the issue of such certificate, the corporation may organize : Mass. 112,45.

(3) Shall be deemed to be a railroad company or corporation incorporated under the authority of the state, and as such shall have the powers, rights, franchises, and privileges granted to or vested in railroad companies or corporations by law, and shall be subject to the provisions of law which affect railroad companies or corporations : Vt. 3309 ; Pa. R.Rs. 5.

As fully as if heretofore created by special act : Pa.

(4) Shall be a provisional corporation with power to organize, make surveys, etc. : N.H. 156,6.

If the certificate of incorporation be not issued within one year after the route is fixed (§ 8849) all proceedings are void : Mass. 1884,265,2.

The said five or more corporators, a majority of whom may act, shall, within a convenient time after the registration of the charter in the office of the secretary of state, elect from their number a president and secretary and treasurer, or the last two officers may be combined into one, and shall not necessarily be stockholders, said president and other corporators to constitute the first board of directors : Tenn. 1887,4,1.

The temporary treasurer, required by the first section of this act, shall pay over all moneys received by him as such treasurer to the treasurer elected by the board of directors : Nev. 837 ; Uta. 2320 ; Ariz. 299.

So, the commissioners : Ala. 1578.

Expenses incurred prior to the organization for preliminary surveys, etc., may, if deemed reasonable, be paid by the president and directors : Va. 1186.

**§ 8527. The first Meeting** shall be called (1) by a notice<sup>c</sup> signed by a majority<sup>a</sup> of the directors,<sup>b</sup> delivered or mailed to each stockholder : Mass.<sup>c</sup> 112,45 ; Me.<sup>a,b,c</sup> 51,4 ; Tenn. 1901.

(2) By simple publication : Neb. 16,80 ; W.Va. 54,36.

The first meeting is called by the treasurer, upon five days' notice : Nev. 834 ; Uta. 2316. "Such notice as the directors deem reasonable." N.H. 156,15.

Upon subscription and payment for stock, as in § 8524 provided : Uta. After certificate issued by the secretary of state (see §§ 8747-8751) : N.H.

So soon as ten per centum (five, Mon.) on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place as they<sup>d</sup> may designate, for the purpose of choosing directors : Md. 23,166 ; Mon. G. L. 683 ; Ala. 1578 ; Neb. 1,16,80.

So, five per cent subscribed, and ten per cent thereof actually paid : W.Va. 54,36.

Directors are elected at the first meeting : Tenn., Uta., Ala.

And the articles (§ 8522) adopted : Nev., Uta.

As soon as practicable after such capital stock shall have been subscribed as aforesaid, the commissioners to receive subscriptions thereto shall appoint a time and place for the meeting of the stockholders in one of the counties in or through which such railroad is proposed to be constructed, and notice thereof shall be given in a newspaper published in each county : Ark. 5425.

The commissioners named in section 5425 shall be inspectors of the first election, shall openly count the votes and declare the result, and shall, within ten days thereafter, file a certificate thereof, subscribed by them (or a majority of them), in the office of the secretary of state and in the office of the clerk of the county court of each county in or through which such railroad shall be proposed to be constructed ; and shall also deliver to the treasurer of such company all moneys received by such commissioners on subscriptions to such capital stock, and all books and papers in their possession relative to such subscriptions : Ark. 5427.

The commissioners call the first meeting when ten per cent of the stock has been subscribed in good faith by solvent subscribers : Ala. 1578.

A majority of the subscribers being present in person or proxy : Ala. 1578.

The proceedings of the meeting of the subscribers must be reduced to writing, must be signed by them, acknowledged before and certified by a judge of probate under the seal of his office, and delivered to the commissioners, who must return and file the same in the office of the secretary of state : Ala. 1578.

The directors named in the articles of incorporation must meet within one week after the filing of said articles at the principal place of business of the corporation, and organize by the election of a president : N.M. 2636.

So, within five days after notice of their election : Nev. 837 ; Ariz. 299 ; twenty days : Uta. 2320.

NOTES. — *a* Five or more : Me. *b* Of the subscribers : Me. *c* "Stating the time, place, or purpose of the meeting : " Me.; seven days notice is required : Mass., Me. *d* The commissioners : Ala. In other states, the subscribers.

**§ 8528. Construction.** If such corporation does not (within two years, Col., Mo., Nev., Uta.) begin the construction of its road, and expend thereon at least ten per cent (five per cent, Ind., Nev., Uta. ; twenty-five per cent, Ill. ; twenty per cent, Col.) of the amount of its original capital stock (1) within two years (five years, N.Y., Ill., Ark., Col. ; three years, Ind., Mich., W.Va., Mo., Me.) after the date of its certificate of establishment (Me., Col.), and does not complete its road and open the same for use within four years (five years, Ct. ; six, Nev. ; ten., N.Y., Ind., Ill., Mich., Mo., Ark., W.Va., N.C., Uta.) after said date, its corporate powers and existence shall cease<sup>a</sup> : Mass. 112,45 ; Me. 51,7 ; Ct. 3440 ; N.Y. 1890,565,5 ; Ind. 3930 ; Ill. 114,28 ; Mich.<sup>a,b</sup> 3390 ; Mo. 2664 ; Ark. 5484 ; W.Va. 54,66 ; N.C. 1980 ; Nev. 888 ; Col. 337 ; Uta. 2358.

(2) Five per cent must be expended within eighteen months, and the road finished in seven years after filing the articles : Vt.<sup>a</sup> 3316 ; Ct.

*Provided*, that the railroad commissioners shall extend the time for the commencement of such railroad and expending ten per cent, and for taking lands, for a period or periods not exceeding in the whole two years beyond the time of two years hereinbefore referred to, if said railroad company has been prevented by litigation, or by the opposition of any party, from complying with the provisions of this statute : Ct.

(3) The company must commence it within six months (two years, Pa.) and complete at least one track within two years thereof (five years, Pa.) if not over fifty miles of road ; if more, six months is allowed for each additional twenty (twenty-five, Pa.) miles : N.J. R. Rs. 122 ; Pa. R. Rs. 5.

*Provided* (*a*) that the road shall be opened for use in all cases when fifty miles are laid : N.J., Pa.

(*b*) That, if a portion be finished and in operation, they shall continue their corporate existence with power to hold and manage such portion : Mo.

(4) It must begin construction within two years, and complete at least five miles every year thereafter ; and upon its failure to do so for one year, its right to extend beyond the point then completed is forfeited : Cal. 5468 ; Ida. 2669.

Where, upon an unfinished road, a right of way, or any part thereof, remains for ten years unused for railway purposes, it shall be held forfeited, and shall revert to the owner of the land unless at least twenty miles of the road have been completed by the company during that period : O. 3414.

(5) Before any land can be condemned, \$10,000 per mile must be subscribed and ten per cent paid : N.Y. 1889,78.

(6) The provisional corporation must complete the necessary steps to become a railroad corporation within two years after record of its articles, or its existence ter-

minates: N.H. 156.7. See §§ 8747-8751. And within three years after the certificate granted by the secretary of state (§ 8750) the road loses its franchise as to any portion not then built: N.H. 156,16.

Provisions in railroad charters, whenever granted, limiting the time within which such railroad shall be completed, shall not affect the portion thereof completed within such time; and all charters under which railroads have been constructed for a portion of the line authorized thereby are confirmed and made valid as to such portion: Me. 51,15.

Any railroad formed under the general law, whose charter has thus lapsed, may apply to the railroad commissioners by its directors to have its charter revived, in the same manner as for a change of gauge: Me. 1887,96,3.

Any company organized under a general law may complete any such abandoned road or part thereof, and for such purpose be invested with all the rights, privileges, rights of way, franchises, and property of the derelict railroad; provided that the value of the latter shall be ascertained by three appraisers and paid by said new company, to be held by the treasurer of each county in trust for the payment of the debts of the old company, and thereafter the balance for the stockholders: Ind. 3981-2.

No railroad company incorporated or organized by special charter or under a general law shall incur a forfeiture of any of its corporate privileges by reason of its having heretofore failed to elect directors within the time prescribed by its charter or said law, or on account of a misnomer of said company in any publication of notice, or for a failure to complete the work within the designated period; but all said companies, so incorporated as aforesaid, shall have full power and lawful authority to construct and complete, within five years herefrom, their roads over the routes which they may have heretofore respectively surveyed and located; and whenever any railroad company shall have surveyed and located a route for a road, and commenced the construction of the same, it shall have full right and authority to complete said road, and to use and occupy the same: provided, that nothing herein contained shall be construed to extend to any companies under special charters, except such as are now organized and have actually constructed some portion of their railroads: Ind. 3974.

Any railroad which shall fail to keep up the directory of its road, and expend at least fifty thousand dollars upon its line within the state within any period of two years, shall be held to have abandoned its road: Ind. 3980.

Any railroad which has adopted another and different line than one theretofore located shall be deemed to have abandoned such prior location: Ind. 3980.

Any railroad whose road is incomplete, which shall fail to complete the same or expend at least twenty-five thousand dollars therefor in each year, shall be held to be abandoned: Ind. 3984.

Whenever any grant of said lands has been made to aid the construction of a railroad upon condition that it shall be completed within a time fixed, and the corporation has failed so to do, the attorney-general must bring suit to vacate such grant: Wis. 1858.

If the works of any company be not commenced and completed within the time prescribed by its act of incorporation, or if, after such works be completed, the company abandon them, or for three successive years cease to use and fail to keep them in good repair, in each of these cases the state may proceed against such company by writ of *quo warranto* or information in the nature of a writ of *quo warranto*, and if in such proceeding there be a judgment against the company the board of public works shall forthwith take possession of its works and property and sell the same (except the debts owing to the company), and the works and property so sold convey to the purchaser thereof as soon as the purchase money has been paid. The board shall moreover collect, as far as practicable, the debts aforesaid, and apply the proceeds thereof and of the said sale, after deducting the costs and expenses of the collection and sale, to the discharge of the liabilities of the company, and whatever remains after said liabilities

are discharged pay into the treasury of the state. Upon such conveyance to the said purchaser, he shall forthwith be a corporation by any name which may be set forth in said conveyance, or in any writing signed by him and admitted to record in the county or corporation wherein the conveyance shall be admitted to record; and to the corporation thus created all the provisions of section twelve hundred and thirty-four shall apply, except that the franchises, rights, and privileges to which such corporation shall succeed, and the duties which it shall perform, shall be such as would have been had or performed by the first company but for the judgment aforesaid in the proceeding by writ of *quo warranto* or information in the nature of a writ of *quo warranto*, save only as in said section is provided: Va. 1239.

A railroad may relinquish its right to any portion of its line by filing a certificate with the secretary of state, the capital stock being reduced accordingly: Ark. 5454. See § 8759.

In Arkansas there is a provision that all railway charters are void unless five miles are actually constructed within twelve months from the passage of this act; but this provision seems to be renewed every year: Ark. 1885,104; 1889,22.

If the railroad shall not, within two years after the articles filed, begin construction and put in running order at least ten miles, and after the first two years shall fail to construct at least twenty additional miles for each and every succeeding year until the entire completion of its line, it shall forfeit its corporate existence, and its powers shall cease as to the unfinished portion, and be incapable of resumption by any subsequent act of incorporation: Tex. 4278 amt.

Railroads must complete fifteen miles every year, and the whole within seven years after filing articles, or forfeit its charter: Mon. G. L. 688.

A corporation organized under the provisions of this chapter forfeits its franchises, and ceases to exist, by non-user of its franchises for five consecutive years: Ala. 1602.

Every corporation formed under this act must commence the construction of its road within two years after the date of the filing of its articles of incorporation in the office of the secretary of this territory, and must finish and put the same in full operation within six years thereafter, or its right to further complete the same in the discretion of the legislative assembly of this territory may be forfeited: N.M. 2688.

NOTES. — <sup>a</sup> The corporate existence shall cease except as to so much of the road as is completed: Vt., Mich., Mo. <sup>b</sup> But only upon petition of one fourth of the stock: Mich.

§ 8529. **Amendments to the Articles** of association so as to change the general route, or extend the line, or make any branches (Mich.), or to change the gauge (N.Y., Mich.), to include new lines of route (Uta.), alter the line or change the termini (Uta.), increase or diminish the number of directors within the limits of § 8538 (Uta.), increase or diminish the capital stock (Uta.), or in any other respect may be made (1) by a two-thirds vote of the stockholders at any meeting: Mich. 3316; Col. 363; Ariz. 329.

(2) By two thirds of *all* the stock, the meeting having a quorum of three fourths: Uta. 2323. By three-fourths vote at a special meeting: N.Y. 1891,267. And increased debt may be incurred or bonds issued for the amount necessary upon like approval: N.Y.

(3) Or by vote of three fourths of its directors at any meeting: Ariz.

Railroads may change their corporate name (1) by majority vote at special meeting of the stockholders: N.J. Suppl. R.Rs. 74; Wis. 1835; N.M. 2708; Dak. 1879,46,14; Oka. 1042.

(2) By resolution of the directors: Ind. 4009. By two-thirds vote: Ga. 1689(m).

(3) By two-thirds vote of all the stock: Io. 1273.

Certificate being duly filed with the secretary of state, etc.: Io., Uta., N.M., Ariz., Dak., Oka.

Railroad companies may change the number of directors, not to be less than in

§8532 prescribed (1) by a majority vote of all the stock at any meeting: Ind. 3962-3963.

(2) By two-thirds vote: Mich. 3313; N.M. 2633.

They may add vice-presidents upon vote of directors: Pa. R.Rs. 35.

The names and residences of directors, if omitted from the first certificate, may be filed thereafter: N.Y. 1890,565,3.

A railroad may change its gauge, upon application to the railway commissioners, by a majority of the directors, increasing by vote the stock to the necessary amount, and five per cent being paid in cash, if the commissioners approve: Me. 1887,96,2; 51,10.

Whenever any railroad shall, in the opinion of its board of directors, require increased capital stock, or any other modification of its articles of association not inconsistent with the provisions of this title, such corporation may, if authorized by the holders of a majority of the stock then existing, make such other modification of its articles of association; provided that it shall file in the office of the secretary of state new articles setting forth the modifications of its said articles of association proposed: Minn. 2459.

An amendment in the articles or act of incorporation of a railroad may be made in writing, signed by the president and directors, attested by the secretary under seal of the corporation, and then submitted to the attorney-general as in the case of original articles, and by him examined and certified, and then filed and recorded with the secretary of state: Tex. 4108, 4109.

When by special charter a railroad has privileges, rights, or benefits which it could not claim, exercise, or receive under the general laws, it is not permitted so to change its charter or articles as to relieve it from any of the requirements of such special act conferring said privileges, rights, or benefits: Tex. 4111. Compare § 8502.

A corporation may change its name, place of business, number of directors, or amount of stock by three-fourths vote of all its stock at a regular or special meeting: Col. 349.

So, by another statute, by a two-thirds vote at a special meeting: Col. 346-348.

Such alteration must be certified by the officers, and filed for record with the secretary of state and the recorder of the county where the corporation is located, and published for three weeks in a newspaper in said county: Col. 349-350.

The principal office (§ 8530) may be changed from one place to another within the state upon written consent of two thirds of the stock; notice of the change being given by publication: N.M. 2649.

### **Art. 853. Government.**

§ 8530. **Office.** (A) Every railway incorporated (or doing business in, Ill., Mich., Neb.) in the state must have its principal office (the office of its treasurer and clerk, Vt., Io.), (1) in the state (and see § 8523): N.H. 156,39; Vt. 3338; Ct. 3434; Pa. R.Rs. 37; Minn. 2563; Io. 1279; Kan. 23,31a; W.Va. 54,36-7; Ore. 2745; Ga. 1689(s).

So, in others, "a" public office in the state: Ill. 114,7 & 30; W.Va. 54,40; Tex. 4115; Ala. 1595; Neb. 1,16,87; 1,72,6,1; S.D. 1890,62.

(2) In the United States: Mich. 3399.

And such office must be on or near the main line of the road: Mich., Minn., Kan., Neb., Tex., Ala.

The general business of the company must there be transacted: N.H.; Tex. 4115a; Ill.; Minn.; W.Va.

Stock and transfer books must be kept at such office: Pa.; Ill.; Io.; Tex. 4116; Neb. 1,72,6,2; W.Va.; S.D. Compare § 8632.

So, general accounts: Mich., Tex., Io., Neb., S.D.

(B) Each company shall, as soon as convenient after its organization, establish a



principal office at some point on the line of its road, and may change the same at pleasure : O. 3311 ; Neb. 16,87 ; Md. 23,174 ; Mon. G. L. 694 ; and shall give public notice of such establishment or change in some newspaper published within the state : O. ; Md. ; Tex. 4118-9 ; Mon.

The offices of the president, secretary, and treasurer of each company shall be established and kept at such office, or at some place on the line of its road, within this state ; and a record of all the proceedings of the company shall be kept at such office or offices, and open at reasonable hours for the inspection of any stockholder of the company : O. ; Io. ; Ark. 5506.

(C) The principal office or place of business of such corporation shall be at such place, in or out of this state, as the stockholders thereof at an annual meeting may fix and determine : W.Va. 54,40 ; Pa. R.Rs. 36.

It is considered the "domicil" of the corporation : Tex. 4120.

And at said point keep some general agent, upon whom service of all legal process against said company may be made, and who shall be authorized to hear and determine all questions relating to the current business of said company arising within the state : Minn. 2563 ; W.Va. 54,37 ; Ala. ; Ariz. 328.

Every railroad not having its principal office in the state shall designate some office within the state as its main office therein, and keep there a stock list, which shall be corrected as often as three times a year : Wis. 1750 ; W.Va. 54,40 ; and failure to comply with this section shall be cause of forfeiture : Wis.

Any railroad not having its treasurer resident in the state and keeping his office therein must appoint an assistant treasurer, who shall reside in the state and keep his office at the principal place of business there : N.H. 157,21.

All dividends to stockholders resident in this state of any railroad wholly or partially in the state are payable at the office of the treasurer or assistant treasurer, unless otherwise requested therein : N.H. 157,23.

But the provisions of this section do not apply to any railroad existing in any other state or owning and operating a portion of its road in this state, unless such portion is represented by stock issued under the authority of this state : N.H. 157,24.

The directors of any company, when they deem it expedient for the interest or convenience of the company, may open transfer-books in any of the states of the United States, for the purpose of transferring stock which may be purchased or held by persons out of this state ; and they may employ suitable agents to keep such transfer-books, whose acts, done under the authority of this section, shall be binding on the company : O. 3291.

Every railroad whose property is principally located within the state must hold its elections at some place within the state : Pa. R.Rs. 113.

A majority of the directors must be resident within the state, of which majority the president shall be one : Pa. R.Rs. 113.

The principal office must be kept within the state : Pa. R.Rs. 113.

It shall be the duty of the railroad and warehouse commissioners to personally investigate and ascertain whether the provisions of this act are violated by any railroad corporation in this state : Ill. 114,33.

Failure to comply therewith forfeits the charter : Ark. 5507.

Any railroad not required to keep its principal office in this state shall, when required by the railroad commissioner, or the legislature, or any committee thereof, or any court of record, produce its books of account and stock-books : Wis. 1750.

At said office there shall be kept at all times the original minutes of the board of directors or executive committee of the board, and a list of the stockholders : Minn. 2564.

No railroad company organized under the laws of any other state or territory, and which may become a corporation of this state and operate its road within this state

under the act to which this is supplemental, shall be required to have any of its directors residents of this state, nor shall it be required to maintain its principal offices and headquarters within this state: Kan. 23,113.

At such office, the auditor, treasurer, general traffic manager, and general superintendent of such roads, or an agent of such corporation duly authorized to adjust and settle all claims against such corporations for damages, shall have their respective offices: Tex. 4115a,1.

The franchises, grants, powers, rights, and privileges, and each and every thereof, conferred by this chapter upon said corporations, are granted upon the express condition that said corporations shall appoint, under their corporate seal, an attorney residing in this territory upon whom process of law may be served: Ariz. 328.

Every railroad is required to keep and maintain its general office within the state at the place mentioned in its charter, or at such place where it shall have contracted so to do for a valuable consideration, and must maintain machine-shops and round-houses at such place, with various special officers and other provisions as to counties which have issued bonds, etc.: Tex. 1889, p. 130.

**§ 8531. Offices in other States.** Such corporation may keep in any other state a transfer office, in which may be kept a duplicate transfer-book; but no transfer of shares of stock shall be legal or binding until the same is entered in the transfer-book kept in this state: Io. 1279. See also § 8530 (C).

Railroads may hold stockholders' or directors' meetings by consent in writing of all the stockholders resident in the state, acknowledged, certified, and filed with the secretary of state, at such place as the by-laws may designate; but a principal place of business must be kept within the state, and there an agent with whom must be deposited records of the proceedings of such meetings, and service of process may be made upon such agent: Ala. 1594.

A railroad company may hold stockholders' meetings at such places out of the state as may be fixed by resolution of directors, with consent in writing of all stockholders resident in the state. The directors may meet either within or without the state: Ala. 1889,130.

In all cases where a majority of the stock of said corporation is held in any other state or territory, then the principal office of said company may be in such other state or territory, and the meetings of said company may be therein held: Ariz. 300.

But such corporation must keep a principal office or place of business within the state, and there keep an agent with whom must be deposited the proceedings of all such meetings, and who may receive service of process: Ala., Ariz.

The meetings of the boards of directors of railroad corporations having one or more directors resident in this territory, upon whom service may be made, may be held at any place mentioned in the notice convening said board of directors, either within or without the territory: Oka. 987.

**§ 8532. Directors.** The immediate government and direction of the affairs of the corporation shall be vested in a board of directors: Mass. 112,55; Me. 51,1; Vt. 3331; Ct. 3455; N.Y. 1850,140,5; N.J. R.Rs. 93; Ill. 114,8; Mich. 3315; Wis. 1822; Neb. 1,16,80; Md. 23,66; W.Va. 54,38; N.C. 1936; Ark. 5425; Tex. 4130; Nev. 834; Dak. 1879,46,3; Uta. 2326; Mon. G. L. 683; Ga. 1689d; Ala. 1593; Fla. 39,4; N.M. 2633; Ariz. 304; Oka. 1029.

And so implied in other states.

Who shall hold their offices for one year, and until others are elected in their places: Mass.; Ct.; N.Y.; N.J.; Ind. 3892; Mich. 3317; Neb.; W.Va.; N.C.; Ark. 5426; Nev. 838; Uta. 2322; Ala. 1578,1593; N.M. 2634; Ariz. 300.

A railroad company may at its annual meeting (after special notice except in O., Ind.) fix the number of its directors: Me. 51,12; Ind. 3891.

There are to be not less than five: Mass. 112,51; Me.<sup>c</sup>; Vt.; Ind.; Wis.; Mon.; Ark.; W.Va.; Nev.; Dak.; Uta. 2316; N.M.; Oka.

Three: Ga., Fla.

Six: Pa. R.Rs. 7; N.C.

Seven: Ind.<sup>a</sup>; Ill.; Neb.; Md.; Tex. 4123; Ala.

Not more than nine: Tex.; Ct.

Eleven: Ala.; N.M.

Thirteen: N.Y.; N.J. Supp. R.Rs. 16; Ind.; Wis.; W.Va.; Ark.; Nev.; Dak.; Uta.; Ga.; Fla.; Oka.

From seven to fifteen: O. 3294.

Not more than seventeen: Pa. R.Rs. 35.

Not more than twenty: N.J. Suppl. R.Rs. 96. And see § 8523.

They are chosen (1) by the stockholders: Ct.; Vt.; N.Y.; N.J.; Pa. R.Rs. 1885, 133; Ind.; Ill.; Minn.; Neb.; Md.; W.Va.; N.C.; Ark.; Tex. 4125; Mon.; Uta.; Ga.; Ala.; N.M.; Ariz.

(2) At such time and in such manner as prescribed by the by-laws: N.Y.; N.J.; Ill. 114,11; Wis.; Minn.; W.Va.; N.C.; Tex.; Nev. 838; Dak.; Ida. 2663; Fla.; N.M.; Ariz. 300; Oka.

(3) At the annual meeting: Tex., Ala.

By a majority of votes cast: N.Y., N.J., Pa., Ind., Mich., Ark., Mon., Uta., Ga., Fla., Ariz.

By a majority in value of all the stock: Ill. 114,11; Tex. 4126; N.M.

By ballot: Md., Ark., Nev., Uta., N.M., Ariz., Mon.

By a plurality: Neb., Md.

And hold office until others are elected: Vt., N.Y., Pa., Wis., Neb., Md., N.C., Ark., Tex., Nev., Dak., Mon., Ga., Fla.

Directors may by majority vote of the stockholders be classified in three classes, so that one third<sup>d</sup> shall be elected at each election, and thereafter the directors shall hold office for three<sup>d</sup> years: O. 3295-7; Ind.<sup>d</sup> 4012; Mich. 3317; Wis. 1824a, 1842; Col. 362; Ill. 114,8; Dak. 1879,46,21; Oka. 1049.

In Illinois, directors *must* be so classified in three classes, as nearly as practicable three in a class: Ill. 114,8.

Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws: Cal. 5454.

No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right<sup>e</sup> (and qualified to vote for directors at the election at which he shall be chosen: N.Y., N.J., Ind., Wis., N.C., Ark., Nev., Ariz., Dak., Ga., Fla., Oka.): N.Y. 1850,140,5; N.J. R.Rs. 93; Suppl. 16; Pa. R.Rs. 130; Ind. 3892; Ill.; Mich. 3315; Wis.<sup>e</sup> 1822; N.C.; Ark. 5426; Tex. 4124; Nev. 838; Dak.<sup>e</sup> 1879,46,3; Ga.<sup>e</sup>; Fla.<sup>e</sup>; Ala. 1593; N.M.; Ariz.; Oka.<sup>e</sup> 1029.

The first directors must be subscribers to the articles: N.H. 156,2; Mass.; Nev.

A majority of the directors must be citizens of the state: N.H.; Mass. 112,36; Ct. 3434; Pa.; Ill. 114,11; Ark. 5505; Tex.; Nev. 838. So, one fourth: N.M. 2728. "At least two:" Ariz.

But all citizens of the United States are eligible: Pa. All must be citizens of the United States: N.M. 2633.

They are sworn faithfully to discharge their duties: Md., Mon.

At least one third of the whole number of the directors shall, at the time of their

election, be residents of some one of the counties in or through which the route of such railroad shall run : Ark. 5426.

The directors may fill any vacancy in their board (or in the office of clerk or treasurer, before the establishment of the corporation, Mass.): Mass. 112,36 ; Ct. 3455 ; Pa. R.Rs. 25 ; Mich. ; Neb. ; Md. ; Nev. ; Uta. 2325 ; Mon. ; Ala. ; N.M. ; Ariz.

Vacancies are filled as the by-laws prescribe : N.Y., N.J., Wis., N.C., Ill., Dak., Ga., Fla., Oka.

Vacancies in all offices may be filled by the directors : Nev., Uta., Ariz.

NOTES. — <sup>a</sup>Of new companies. <sup>b</sup>But see below. <sup>c</sup>At the first organization. <sup>d</sup>One fourth, and four years, respectively: Ind. <sup>e</sup>“Or as trustee or personal representative:” Wis., Dak., Ga., Fla., Oka.

§ 8533. **Other Officers.** The directors shall elect one of their number to be president: Mass. 112,55 ; Vt. 3336 ; Ct. ; N.Y. 1850,140,6 ; N.J. R.Rs. 88,94 ; Suppl. 16 ; Ind. 3895 ; Ill. 114,12 ; Mich. ; Wis. 1823 ; Neb. ; Md. ; Mo. 2546 ; Ark. 5433 ; W.Va. 54,42 ; Tex. 4131 ; Dak. 1879,46,4 ; Nev. 837 ; Uta. 2320 ; Mon. ; Ga. 1689e ; Fla. 39,5 ; Ala. 1593 ; N.M. 2636 ; Ariz. 299 ; Oka. 1030.

And another treasurer : Nev., Ariz.

And may elect another to be vice-president : Mass. ; N.J. Suppl. R.Rs. 96 ; Pa. R.Rs. 24 ; Nev. 842 ; Uta. ; Ariz. 303.

There may be several vice-presidents : N.J.

They may choose a clerk or secretary, who shall be sworn : Mass. 112,36 & 55 ; Vt. ; Ct. ; N.Y. ; Wis. ; Neb. ; Mo. ; Nev. ; Uta.<sup>a</sup> ; N.C. 1937 ; N.M. ; Dak. ; Mon. ; Ariz. ; Ga. ; Oka.

They may elect a vice-president : O. 3292 ; Wis. ; Dak. ; Ga. ; Fla. ; Oka.

A treasurer: Mass. ; Vt. ; Ct. ; N.Y. ; Wis. ; Neb. ; O. 3293 ; N.C. ; Md. ; Dak. ; Mon.<sup>a</sup> ; Uta. ; Ga. ; Fla. ; Oka. ; N.M.<sup>a</sup>

And such other officers and agents as shall be prescribed (1) by the by-laws : Vt., N.Y., N.J., Pa., Ill., N.C., Neb., Mo., Wis., W.Va., Tex., Nev., Dak., Uta., Ala., Ark., Ariz., Ga., Fla., Oka.

(2) As they deem necessary : Ala., Ct.

Who shall give bond in the sum required by the by-laws, with sureties for the faithful discharge of his duties: Mass. ; Vt. ; Ct. ; N.Y. ; Pa. 1885,133,2 ; Ark. ; W.Va. ; Tex. ; Nev. 837,842.

And may be removed by the directors : Nev., Ariz., Uta.

So the secretary and treasurer give bond as required by the directors: Nev. ; Uta. 2320 ; Ariz.

They “may appoint such subordinate officers and agents as the business of the corporation requires, and allow them a suitable compensation:” Vt. 3309 ; Pa. ; Ind. 3895 ; Uta. 2325 ; Mich. 3315.

And require security from them : Ind., Uta., Ill., Mich., W.Va.

But it takes a majority of the directors to appoint any officer : Ill., W.Va.

The president, treasurer, and secretary hold office until their successors have been elected and qualified: Nev. 837 ; Uta. 2320 ; Ariz.

They shall choose a secretary and treasurer, and may appoint or employ all such officers, engineers, agents, superintendents, artisans, workmen, or other persons, as in their opinion may be necessary or proper in the management of the affairs and business of said corporation, at such times, in such manner, and under such regulations, as they may from time to time determine: Pa. 1885,133,2.

The stockholders elect the president at the annual meeting : Pa., N.C.

The treasurer : Vt., Io.

Clerk or secretary : Vt., Io.

General superintendent : Io.

They must be resident in the state : Vt. 3338 ; Io. 1279.

The said officers shall be chosen at such times, and for such terms, and the directors may fix the compensation of each, and they shall give such security for the faithful performance of the duties of their respective offices as the directors shall require, or as may be established by the by-laws of the company : Ariz. 303 : Nev. 842.

The president and directors and officers and agents of the company, in the exercise of their respective powers and duties, shall at all times be governed by, and be subject to, such rules, regulations, and directions as the stockholders holding a majority in value of the stock may adopt at such meeting : Mich. 3317.

NOTE. — "Such officer must be a stockholder.

**§ 8534. The Annual Meeting.** Every railroad must hold an annual meeting for election of directors (1) at some time and place established by the by-laws : Mass. 112,51 ; Vt. 3333 ; N.Y. 1890,565 ; Pa. R.Rs. 1885,133 ; Minn. 2561 ; Md. 23,166 ; Ark. 5428-9 ; W.Va. 54,36-8 ; Neb. 1,16,80 ; Mon. G. L. 683 ; Ala. 1591 ; Ill. 114,8 ; N.M. 2634.

(2) To be held in one of the counties in which the road may be constructed : Ind. 3892 ; Mich. 3317 ; Ark. ; Nev. 838 ; Uta. 2322. "In the state : " N.Y.

(3) At the principal office (§ 8530) : Tex. 4116,4158 ; N.M. 2647 ; Ariz. 300 ; W.Va. ; Tenn. 1901.

If the by-laws are silent, then at such time or place as the directors designate : Vt.

Or the charter prescribes : Minn.

If no such time is prescribed, then on the first Monday in June : Minn. The second Wednesday in January : W.Va. 54,40. The first Wednesday in July : N.M.

Notice must be given by publication in each county through which the road runs (in any paper, Uta.) twenty days previous : Ind., Nev., Uta., Ariz. So, twenty-five days, and for three weeks in the county of the main office : Minn. So, thirty days : Tex. Thirty days in a Little Rock paper : Ark. 5430.

"For the election of directors and other officers, and the transaction of business generally. At such annual meeting any business authorized to be transacted at a special meeting may be transacted, if notice be given as is required in reference to a special meeting that such business will be considered and transacted : " Ala. 1591.

At every election of directors the books and papers of such company shall be exhibited to the meeting, if a majority of the stockholders present shall require it : N.Y. 1850,140,5 ; N.J. R.Rs. 93 ; Suppl. 16 ; Wis. 1822 ; N.C. 1936 ; Dak. 1879,46,3 ; Ga. ; Fla. ; Oka.

At every annual meeting by-laws may be made or altered by a majority vote, and any other corporate act done which is authorized by the charter : Pa. 1885,133.

By-laws can only be altered at an annual meeting and by a majority of *all* the stock : Tex. 4127.

At each annual meeting of the stockholders of any such company, the president and managers (the directors, Mich., Ark., Ill.) of the preceding year shall exhibit to them a full and complete statement of the affairs and proceedings of the company for such year (with all such matters as shall be necessary to convey to the stockholders a full knowledge of the condition and affairs of said company, Pa., Ind., Ill., W.Va.) : Pa. R.Rs. 30 ; Ind. 3894 ; Ill. 114,10 ; Mich. 3318 ; W.Va. 54,38 ; Ark. 5431 ; Tex. 4150.

And the said president and directors of every such company shall, whenever required, furnish to the legislature, or either branch thereof, a full and authentic report of their affairs and transactions, or such information relating thereto as may be demanded of them : Pa.

At any meeting of the stockholders, a majority of those present in person or by proxy may require similar statements from the directors, whose duty it shall be to furnish them when thus required: Ind. 3894; Ill.; Ark.; W.Va.; Tex. 4151.

At a general meeting of the stockholders, a majority in value of the stockholders in said company may fix the rate of interest which shall be paid by the company for loans for the construction of said road and its appendages: Ark. 5431; Ill. 114,10; W.Va. 54,38; Tex. 4152; Col. 335.

And the amount thereof: Tex. See § 8640.

At any meeting they may remove any president or any director of said company, and elect others in their stead, provided notice of such intended removal has been given as required by the next section: Ind. 3894; Ark. 5431; Ill.; Mich. 3317. So, two thirds in value being present: Nev. 841; Uta. 2324; N.M. 2638; Ill.; Tex. 4153; Ariz. 302. And voting to remove: Ill., N.M.

The directors may remove the president or any officer: Ala. 1593.

NOTES. — <sup>a</sup> But it must be in the month of January: Pa.

§ 8535. **Other Meetings.** If an election of directors is not made on the day designated in the by-laws of a railroad company, the company for that reason shall not be dissolved, (1) if within ninety days thereafter it holds an election for directors in such manner as is provided for by the by-laws: Vt. 3334; Pa. R.Rs. 25; Ind. 3895; Ill. 114,11; Ark. 5432; Nev. 842; Ariz. 303.

(2) Such meeting may be held at any time thereafter upon twenty or thirty days' notice: Wis. 1822; W.Va. 54,38-9; Dak. 1879,46,3; Ga. 1689d; Fla. 39,4; Oka. 1029.

(3) Within six months: W.Va. 54,41.

(4) As the by-laws provide: Tex. 4129; N.M. 2642.

(5) One year: Uta. 2325.

Meetings of the stockholders may be called at any time during the interval between the annual meetings by the directors, or by the stockholders owning not less than one fourth of the stock (one third, Ark., Uta., Ariz.), by giving thirty days' public notice <sup>a</sup> (fifteen days, Nev.) of the time and place of the meeting, in the manner provided in the next preceding section for the annual meetings.<sup>a</sup> (When any such meeting is called by the stockholders, the particular object of such meeting shall be stated in such notice: Ind., Mich., Ark., Tex., Nev., Uta., Ariz.) If at any such meeting thus called a majority (two thirds, Ill., W.Va., Tex.) in value of the stockholders are not represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days (ten, W.Va.), without transacting any business; and if within said three days stockholders having such majority or two thirds of the stock do not attend such meeting, then the meeting shall be dissolved: Ind. 3893; Ill. 114,9; Mich. 3317; Ark. 5429; W.Va. 54,39; Tex. 4161-3; Nev. 839; Uta. 2323; Ariz. 301.

And a new call issued: Ill., W.Va., Tex.

(Other) meetings shall be called and notified as provided in the by-laws of the corporation: Vt. 3335; Ct. 3456; Pa. 1885,133.

By the directors, upon sixty days' notice by mail and publication, stating time, place, and object of the meeting; and two thirds of the stock must attend; and any business may be transacted at such meeting, except altering the by-laws: Ill. 114,15.

Upon written request of thirty stockholders, or a majority of the stockholders, if the number is less than thirty, the president must call a special meeting: Mass. 112,52.

So, upon request of one tenth of the stock: Pa. 1885,133.

Upon the failure of any said company so to elect officers and establish their office, the governor may nominate seven persons stockholders of such company to be directors, who shall be approved by the commissioners : Pa. R.Rs. 114.

In case of the directors' neglect so to do, a majority of the stockholders may call an annual election of directors : Mich. 3317 ; N.M. 2638,2642.

Such election may be called by a majority of the directors, or by the stockholders holding a majority of the stock : Wis. 1822 ; Dak. ; Ga. ; Fla. ; Oka.

But at any meeting at which all the stockholders shall be present, or be represented by attorney or proxy, it shall be lawful to waive notice, and proceed to an election of directors : Wis. 1822 ; Dak. ; Ga. ; Fla. ; Oka.

It takes two thirds of the stock to make a quorum : Tex. 4160.

In Tennessee elaborate provision is made for failure to call an election, or for the holding over by the elected officers, with petition to court, order for election, etc. : Tenn. 1238-1249.

And no other business shall be transacted at such meeting, when so called by the stockholders as aforesaid, except such as shall be so stated in such notice : Ariz., Uta.

Whenever, from any cause, there is no person authorized to call or preside at a meeting of the stockholders, any justice of the peace of the county where the principal place of business of the corporation is established may, on written application of three or more of the stockholders, issue a warrant to one of the stockholders directing him to call a meeting of the stockholders, by giving the notice required in other cases : N.M. 2639.

Any election or vote had other than in accordance with the provisions of this chapter shall be voidable at the instance of absent stockholders, and may be set aside upon petition to the district court : N.M. 2640.

Any regular or called meeting of the stockholders may be adjourned from day to day, or from time to time, if for any cause there are not present stockholders representing a majority : N.M. 2640.

When all the stockholders are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting shall be valid : N.M. 2645. And any business may be done : N.M. 2646.

NOTE. — " In a newspaper of each county through which the road runs, or is intended to run : Ark.

**§ 8536. Method of Voting.** At all meetings, each stockholder is entitled to one vote for each share : Mass. 112,53 ; Vt. 3313,3330 ; Ct. 3456 ; N.Y. 1850, 140,5 ; N.J. R.Rs. 93 ; Suppl. 16 ; Pa. R.Rs. 25 & 33 ; Ind. 3892 ; Mich. 3315 ; Wis. 1822 ; Neb. 1,16,80 ; Md. 23,166 ; N.C. 1936 ; Tenn. 1901 ; Ark. 5425 ; Nev. 838 ; Ga. 1689d ; Fla. 39,4 ; Ala. 1592 ; N.M. 2635 ; Ariz. 300 ; Dak. 1879,46,3 ; Mon. G. L. 683 ; Uta. 2322 ; Oka. 1029.

Not exceeding one tenth part of the whole capital stock (except that cities, towns, and railroad corporations may vote upon the whole number of shares held by them, Mass.) : Mass. 112,53 ; Vt. 3330.

No vote shall be given upon shares owned by the corporation or pledged to or for its benefit : Mass. 112,53.

This section shall not prevent the state from voting upon all its shares of stock in any railroad : Mass. 112,53.

In all elections for directors and managers of such railroad corporations, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candi-

dates as he may think fit; and such directors or managers shall not be elected in any other manner: W.Va. 54,56; Tex. 4128; Ill. 114,26.

No subscriber to the capital stock of any railroad company shall be allowed to vote on any of said stock, unless all assessments or instalments on it, legally called in by such company, shall have been paid (if due for thirty days previous, Pa., Mon.) in full: Ct. 3458; Pa. R.Rs. 28; Mich. 3315; Neb. 1,16,80; Md.; Mon. See § 8601.

The agent appointed by any town to subscribe for stock in any railroad company may vote on the shares of stock subscribed for by him, in all meetings of such company, unless such town shall otherwise direct: Ct. 3459. Compare § 8652.

Stock can only be voted on which has been held thirty days previous to the election: N.Y. 1850,140,5; Wis.; N.C.; Ark. 5509; Dak.; Oka.

So, sixty days: Pa. R.Rs. 25.

Ten days: Ind.; Mich.; Nev. 838; Uta. 2322; N.M. 2640; Ariz.

Stock issued within thirty days before any stockholders' meeting shall not entitle the holder to vote thereat, except at the first stockholders' meeting under their articles: Tex. 4165.

Nor shall any stock be voted upon, except in proportion to the amount paid thereon, or secured to be paid, by good security, in addition to the subscription and stock: Tex. 4165.

At all meetings of the stockholders, a majority of the stock must be represented: Ala. 1592; Mich. 3317; Nev. 838; N.M. 2640. So, two thirds: Tex.

Any stockholder or representative of any stockholder in any railroad company may call for a stock vote thereof at any meeting of its stockholders, on any question legally before it, anything in the charter or by-laws of such company to the contrary notwithstanding: Me. 51,13.

Generally, proxies are allowed: Mass.; Vt. 3313; N.Y. 1850,140,5; Ind. 3892; Mich. 3315; Wis. 1822; Minn. 2561; Neb. 1,16,80; N.C. 1936; Ark.; Tex. 4136; Nev. 838; Uta. 2322; S.C.; Ga.; Ala.; Fla.; N.M.; Ariz. 300; Md. 23,166; Dak. 1879,46,3; Mon.; Oka.

Voting by proxy is not allowed except by women or sick or infirm persons, and no person may vote on more than fifty shares under a proxy: N.H. 149,25.

No proxy shall be valid unless executed and dated (1) within six months before the meeting at which it is used: Mass. 112,54; 1888,188; Tex. 4164; S.C. 1436.

(2) Within three months before: Pa. R.Rs.\* 25.

(3) One year: Minn. 2561.

No person shall as proxy or attorney cast more than fifty votes (one hundred votes, S.C.), unless all the shares so represented by him are owned by one person: Mass., Tex., S.C.

Every railroad company may prohibit the officers from voting in the election of directors upon any other stock than their own; and no officer of such company shall request any stockholder to execute a power of attorney to vote upon his stock; and no person shall be allowed to vote by virtue of a power so obtained; and any person who shall violate the provisions of this section shall be disqualified from holding any office in said company for one year thereafter: Ct. 3457.

No person can vote or issue a proxy to any other person to vote at a stockholders or bondholders' meeting or election upon any stock or bonds of which the certificates are not in his possession and control; and he shall have ceased to retain the title to such stock or bonds notwithstanding they may still stand in his name: N.Y. 1886,510,2.

No person shall sell his vote or issue a proxy upon stock or bonds for any sum of money or thing of any value, and may be required to make oath to such effect: N.Y. 1886,510,2.



No salaried officer of the corporation shall vote as proxy or attorney : S.C. 1437.

Inspectors of elections of railroad stockholders must be sworn : N.Y. 1880,510,1; Pa. R.Rs. 25.

They must be (1) appointed by the directors : Pa.; Ind.; Wis.<sup>a</sup>; Mo.<sup>a</sup> 2547; N.J.<sup>a</sup> Supp. R.Rs. 16; N.C.<sup>a</sup> 1936; Dak.<sup>a</sup> 1879,46,3; Ga.<sup>a</sup>; Fla.<sup>a</sup>; Oka.<sup>a</sup>

(2) Elected by the meeting : Mo.

(3) They are the incorporators : Md.<sup>a</sup> 23,166; Mon.<sup>a</sup>

So only when these fail to attend or the directors to appoint : Pa. R.Rs. 34.

No director or officer may be an inspector : Mo., Ind.

Said oath, with a certificate of the result of the vote or election, must be filed in the office of the county clerk : N.Y. 1880,510,1.

Upon the application of any person or body corporate aggrieved by any election held by any corporation formed under this act, or any proceedings thereof, the district judge of the district in which such election has been held must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters complained of; and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right : N.M. 2643.

NOTE. — <sup>a</sup> At the *first* election thereafter as the by-laws prescribed, or as below stated.

§ 8537. **By-laws.** (See also § 8700.) The directors (or in others, “the company,” Tex.) may make by-laws not inconsistent with law, (1) for the management of the property of the corporation, the regulation of its affairs, and the transfer of its stock : Vt. 3309; Ct. 3455; Pa. R.Rs. 1; Ind. 3897; Ill.; W.Va.; Nev. 843; Mon. G. L. 683; Uta. 2326; Ariz. 304.

(2) “Not incompatible with an honest purpose :” Minn.

(3) “For the government of the company :” Tex. 4135; S.C. 1885,96,2; Mon. G.L. 683.

(4) For prescribing the duties of officers, and their appointment : Ind., Ariz.

“The by-laws may be made by the directors :” Md. 23,166; Neb. 1,16,80.

They may make by-laws and regulations in regard to the management of the stock, property, and affairs of said company : Ct. 3455.

They make all needful rules, regulations, and by-laws for the transaction of its business and the management of its affairs : S.C. 1423; Ala. 1580,4; N.M. 2630.

And for prescribing the duties of officers, artificers, and employees of said company, and for the appointment of all officers, and all else that by them may be deemed needful and proper within the scope and power of said company : Nev. 843; Uta.

Provided that such by-laws shall be approved by a majority of the stockholders, and shall not be inconsistent or in conflict with the laws of this state, or with the articles of association : Nev. 843; Uta.; Ariz.

The number of such directors, the manner of their election, and the mode of filling vacancies, shall be specified by the by-laws, and shall not be changed except at the annual meetings of the stockholders : Ill. 114,8; Tex. 4127.

A copy of the by-laws of such corporation, when formed and adopted by the stockholders, duly certified, shall be recorded as provided for the recording of the articles of association in [§ 8522], (and all amendments and additions thereto, duly certified, shall also be recorded, as herein provided, within ninety days after the adoption thereof : Ill., W.Va.) : Ill. 114,6; W.Va. 54,35; Neb. 1,16,80.

The board of directors are hereby authorized and required to provide by by-laws for the disposition of its unsubscribed capital stock, and may provide for the election or appointment of agents or employees of said company, and may require of them security for the faithful performance of their duties, and for the general management of the business and affairs of said company : Mich. 3315.

The directors of such company shall have power to make by-laws for the management and disposition of the stock, property, and business affairs of such company not inconsistent with the laws of this state, and prescribing the duties of all officers, artificers, and servants that may be employed by such company, and for the appointment of all officers for carrying on all the business within the object and purposes of such company: Ark. 5435.

No by-law shall be enacted, altered, amended, added to, repealed, or suspended, except at a regular annual meeting of the stockholders, and by a majority vote of two thirds in value of all the stock of the corporation: Tex. 4137.

Every corporation formed under this act must, within three months after filing articles of incorporation, adopt a code of by-laws for its government, not inconsistent with the laws of this territory. By-laws may be adopted by stockholders representing a majority of all the subscribed capital stock: N.M. 2630.

Provided that the written assent of the holders of two thirds of the subscribed capital stock shall be effectual to adopt a code of by-laws without a meeting: N.M. 2630.

Where no other provision is especially made by this act, a corporation formed under it, by its by-laws, may provide for, —

1. The time, place, and manner of calling and conducting the meetings of its directors and stockholders. (So in Ark. 5430.)
2. The number of stockholders constituting a quorum at meetings of stockholders.
3. The mode of voting by proxy at meetings of stockholders.
4. The time for holding annual elections for directors, and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than the directors.
7. Suitable fines for violation of by-laws, not exceeding in any case one hundred dollars for any one offence.
8. The mode and manner of collecting assessments, except as otherwise provided in this act: N.M. 2631.

§ 8538. **Records and Accounts.** (See Art. 856.) All proprietors of railroads shall keep a full record of all their doings, and exact accounts of all their receipts and expenditures, and, when required, submit all their accounts, records, papers, and files to the inspection of the legislature, its committees, and the railroad commissioners: N.H. 157,16.

Every railroad corporation shall keep its books and accounts in a uniform manner: Mass. 112,81.

Upon the system heretofore prescribed by the board: Mass.

And shall at all times submit its books to the inspection of the board: Mass.

Or of any committee of the general court authorized to inspect them: Mass.; Tex. 4122.

Or to the legislature itself: Tex. 4115a.

The directors shall also cause to be kept a book, to be called "Record of Corporation Debts," in which the secretary shall record all written contracts of the directors, and a succinct statement of the debts of the company, the amount thereof, and with whom made, which book shall at all times be open to the inspection of any stockholder or party in interest: Nev. 844; Uta. 2327; N.M. 2650; Ariz. 305. When any contract or debt shall be paid or discharged, the secretary shall make a memorandum thereof in the margin, or in some convenient place in the record, where the same is recorded: Nev., Ariz. No contract shall be binding upon the company unless made in writing: Nev.

The secretary shall keep, in a book provided for that purpose, a correct record of the proceedings at each meeting of the company, as well as of the board of directors; such record showing the name of each director present at the opening of each meeting of the board (and at what stage of the proceedings any director, previously absent, may appear, and also at what stage of the proceedings any director may obtain leave of absence: Nev., N.M., Ariz.). The records shall also show the name of each director voting against any proposition, whenever any director may require the same to be placed upon the record. Prior to the adjournment of each meeting of the company, or of the board of directors, the record of the proceedings of such meeting shall be read and approved; and he shall also keep such other books as may be deemed necessary, or prescribed by the directors, in which all the business transactions of the company shall be plainly and accurately kept: Nev. 845; Uta. 2328; Ga. 1689q; Fla. 39,29; N.M. 2650; Ariz. 306.

**§ 8539. To Stockholders.** Every stockholder of any railroad corporation incorporated within this state may at all reasonable times examine the books, papers, and accounts of the corporation: R.I. 158,24; Ill. 114,10; Io. 1279; W.Va. 54,38; Tex. 4141.

So only officers, committees, or stockholders' committees representing one tenth of the capital stock: Wis. 1844.

So any committee of the legislature: Io.

The books of such corporation kept at its public office shall, at all reasonable business hours, be open to the inspection of each stockholder, and to any agent or officer of the state whose duty it may be to inspect such books: Tex. 4121,4115a.

Every railroad corporation shall make an annual report to the stockholders of its operations during the year ending on the thirty-first day of December, which report shall be verified by the affidavit of the secretary, treasurer, and superintendent of the corporation, and shall state:—

1. The length of road in operation; the length of single track; the length of double track; the weight of the rail per yard.
2. The capital stock actually subscribed, and the amount paid thereon.
3. The whole cost of the road, showing the amount expended for the right of way, for bridging, grading, iron, and buildings respectively, and for all other purposes incidental to the construction of such road.
4. The amount and nature of its indebtedness, distinguishing the first, second, and third mortgage bonds, and the unsecured indebtedness, and the amount due the corporation.
5. The number of through and way passengers, and the rate of fare.
6. The amount received for the transportation of passengers, property, and mails, for interest, and from all other sources respectively.
7. The amount of freight, specifying the quantity in tons or other usual mode of measurement.
8. The amount paid for repairs of the road, buildings, engines, and cars respectively; for fuel; taxes, and interest, specifying the indebtedness on which the same is paid; for wages of employees; for salary paid to each officer where it exceeds one thousand dollars per annum; and for any other purpose incidental to the business of transportation, so as to give a complete statement of the entire annual expense of the corporation.
9. The amount of loss to the corporation from casualty.
10. The number and amount of dividends, and when made, and in what manner such dividends have been paid.
11. The amount appropriated to sinking fund, and the manner in which the same has been applied, and the total amount then held by such sinking fund.

12. The number of persons killed or injured, the causes thereof, and whether passengers or persons employed by the corporation.

13. Whether any such accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of said corporation. The secretary of each railroad corporation shall mail to every stockholder thereof, whose post office address is known, a copy of its annual report, and shall file a certified copy thereof with the railroad commissioner on or before the first day of February : Wis. 1843.

Compare Art. 856.

**Art. 854. Officers.** (Compare Art. 804.)

§ 8540. **General Qualifications.** (See also §§ 8532, 8533.) No officer of any railroad corporation shall be an officer of any other railroad corporation which owns or controls a parallel or competing line : Wis. 1804 ; Mo. 2570 ; Ark. 1887, 81,2 ; to be determined by a jury : Ark., Mo.

No president, director, officer, agent, or employee of any railroad company (or canal company, Pa.) of this commonwealth shall hereafter be engaged in the business of transportation as a common carrier of freight, by any express or other freight line, or in the transportation of passengers (by any sleeping or parlor car or other line, Pa.) over the works owned, leased, or controlled or worked by such company ; Pa. R.Rs. 45 ; Wis. 1804 ; Mo. 2625 ; and any profit realized by such president, director, officer, agent, or employee, in violation of the provisions of this section, shall belong to and be recoverable by such railroad or canal company : provided, suit therefor shall be commenced within one year after the discovery of such violation : Pa.

No president, director, officer, agent, or employee of any railroad or canal company (or other carrier, Ark.) of this commonwealth shall hereafter be interested in any contract for the furnishing of material or supplies to any such railroad or canal company : Pa. R.Rs. 44 ; Wis. 1804 ; Mo. 2625 ; Ark. 1887,81,3 ; and it shall not be lawful for such president, director, officer, agent, or employee to institute or maintain any action at law or suit in equity to recover under such contract for his or their interest therein : Pa., Ark.

Nothing, however, in this act contained shall prevent any president, director, officer, agent, or employee from being a shareholder in any incorporated or joint stock company or association : provided, however, that no director interested as a shareholder, as aforesaid, shall vote upon any contract for furnishing material or supplies to be entered into with any other incorporated or joint stock company or association in which he is likewise interested as a shareholder ; and no contract shall be made by any officer, agent, or employee, for furnishing material or supplies, with any incorporated or joint stock company or association in which such officer, agent, or employee is likewise interested as a shareholder, unless in pursuance of an order of the board of directors, or of a proper disinterested superior officer of such railroad or canal company ; any violation of the provisions of this act shall be punished by a fine not exceeding five hundred dollars : Pa. R.Rs. 46.

No stockholder or owner of any express companies, freight, or transportation company, incorporated or not, or who is interested in such company or business, may hold office in any railroad company, or be employed as freight or ticket agent thereof : O. 3315 ; Mo. 2555.

If any director, officer, or employee of a railroad is interested directly or indirectly in furnishing material or supplies to such company, or in the business of transportation as a common carrier over works of such company, he commits a misdemeanor : Pa. R.Rs. 153 ; Mo.

§ 8541. **General Duties.** (Compare Art. 806.) The president and directors of every railroad corporation shall maintain, by themselves or by an executive committee of the directors, a watchful supervision over the management of their road : R.I. 158,4.

The president and directors of such company, for the time being, are hereby authorized and empowered to exercise all the powers granted to the corporation : Pa. 1885, 133,2 ; R.Rs. 26.

The directors shall, for and on behalf of such company, manage the affairs thereof, make and execute contracts, of whatever nature or kind, fully and completely to carry out the objects and purposes of such corporation, in such way and manner as they may think proper, and exercise generally the corporate powers of such company : Nev. 843 ; Uta. 2326 ; Ariz. 304.

They shall fix the amount of the salaries and wages of such officers and persons employed by them, and they may require bond, with security in such amounts as they may deem necessary, of each or any of said officers : Pa. 1885,133,2. Compare § 8533.

And generally to do all such other acts, matters, and things as by this act and the by-laws and regulations of the said company they may be authorized to do : Pa. 1885,133,2.

Expenses incurred prior to the organization of the company, for preliminary surveys, or for stationery or advertising, may, if deemed reasonable by the president and directors, be paid by their order : W.Va. 1186.

§ 8542. **Meetings, etc.** A majority of the directors shall form a quorum, and may transact the business of the company : Vt. 3336 ; Mich. 3315 ; Neb. 1,16,80 ; Md. 23,166 ; Ark. 5453 ; W.Va. 54,36 ; Tex. 4160 ; Mon. G. L. 863 ; N.M. 2633,2636.

It always takes a majority of them to elect or appoint any officer of the corporation : W.Va. 54,42 ; Tex. 4132.

They shall meet at such times and places as shall be by them deemed most convenient : Pa. 1885,133,2.

Seven directors, or the president and six directors, shall be a quorum : Pa. 1885,133,2.

They shall keep minutes of their proceedings fairly entered in a suitable book to be kept for that purpose : Pa. 1885,133,2.

The directors must hold at least one annual meeting at the public office of the corporation, giving thirty days' notice by publication : Tex. 4157,4115a.

An annual meeting of the board of directors and other stockholders above provided for may be called and held at the same time and place, one notice being given for both : Tex. 4159.

The directors must hold a meeting on the second Tuesday of March in each year, at the general office, after thirty days' notice by publication [it would seem that this means a meeting for stockholders as well as directors] : Mo. 2577.

The directors named in the articles of association shall meet and organize as a board immediately after their election, or within five days after having received notice of such election given by the committee named and designated in the first section of this act : Ariz. 299.

When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings of the directors must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or, if there be no president, on the order of any two directors : N.M. 2648.

Provided, that the meetings of the boards of directors of railway corporations having one or more directors resident in this territory, or having duly appointed an agent resident in this territory, upon whom service may be made, may be held at any place mentioned in the notice convening said board of directors, either within or without the territory : Dak. 1887,36.

§ 8543. **Dealing in Stocks, etc.** The railway may not loan any of its funds to any director or other officer thereof, or permit them or any of them to use the same for other than the legitimate purposes of the corporation: Tex. 4142; Ill. 114,14.

All capital stock, bonds, notes, or other securities of a company, purchased of the company by a director thereof, either directly or indirectly, for less than the par value thereof, shall be null and void: O. 3313.

The directors shall be liable in their individual capacity to the stockholders for any damage sustained by the stockholders by reason of the negligence, mismanagement, or unfaithfulness in the discharge of their duties; but a director may exonerate himself by entering his protest upon the record against any act done without his concurrence from which injury is feared, and forthwith publishing the same for three weeks in some newspaper printed and of general circulation in the county in which is the principal office of the company: O. 3314.

§ 8544. **Liabilities.** (Compare Art. 823.) If any certificate, or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are such officers thereof: Ark. 5439; Tex. 4134; Nev. 889.

And are also guilty of a misdemeanor: Nev.; Minn. 2526.

If any officer signs a certificate or report wilfully false in any material representation, knowing it to be false, he is liable to a penalty: Mich. 3388.

Any officer who, wilfully and with intent to defraud, makes, signs, seals, issues, or offers to sell any fraudulent stock or other evidence of debt of said corporation, is guilty of felony: Mich. 3393. Compare §§ 8604, 8834.

## **Art. 855. Employees.**

§ 8550. **Employees' or Mechanics' Lien.** Provision is commonly made giving laborers in construction of a railroad a remedy against the company, if the contractor fail to pay, (1) upon filing notice within twenty to sixty days after performing the labor: Mass. 112,143-146; Me. 51,141; Vt. 3372; N.Y. 1890,565,30; N.J. R.Rs. 98; Mich. 3423-4; Wis. 1815; N.C. 1942; Mo. 2565; 1887,25; O. 3208,3231-1; Ill. 82,55-8; Minn. 2542; Ky. 1888,70; Tenn. 2778; Ore. 1889, p. 76; Fla. 143,41. (Compare the general Mechanics' Lien Law, Vol. I., §§ 1961, 1962.)

(2) Without notice: Ind. 1889,123,6; Tex. 3179a.

So, contractors or material men have a lien: Tenn.; Mo. 6471; Ark. 1887,70; Tex.

This lien is superior to *all* others: Tenn. 2774,2778; Ark.; Tex.; Fla.

To all except prior mortgages: Mo. 6742.

No action shall be maintained, unless commenced within sixty days after the plaintiff ceased to perform such labor or to furnish such materials: Mass. 112,147.

Within thirty days after the above notice: N.C., N.J. Ninety days: Mo. Sixty days: Wis., Minn. 2543. Six months: N.Y., Ill., Tenn. Twelve months: Tex., Ark.

§ 8551. **Duties of Railroad.** A railroad in making contracts for building must require security from the contractors for the payment of all material men and labor: Me. 51,141; Vt. 3372; Ct. 3372; Mich. 3423; Minn. 2541; Kan. 23,99.

If it fail to take such bond, the railroad is liable to the full extent of such debts owed by the contractor: Kan.

If no such provision is made in said contract or contracts, it shall be lawful for said

railroad companies to withhold payment until such laborers and persons furnishing material are paid: Mich. 3423.

"And the railroad company shall provide, in its contract with any person, association of persons, or corporation for the construction of its road, or any part thereof, that payments under its said contract shall be made in the following order of priority: First, to the persons performing labor or furnishing materials, or furnishing boarding on the order of any contractor or sub-contractor to persons employed by them, or either of them, in furnishing materials or labor for or in the construction of such railroad, without preference. Second, to any sub-contractor, any balance due under his contract after payment of his or their liabilities to persons performing labor or furnishing materials or boarding, under his or their contract. Third, to any contractor or construction company intervening between a sub-contractor and the railroad company, in the order of such intervention from such sub-contractor upward to the owner of the railroad, any balance due after payment by the company of amounts found due in the order of priority above stipulated": O. 3207.

Any railroad contractor or sub-contractor must cause his work to be inspected once each month, or be liable to any person injured to the full value of the work: Ark. 1889,53.

Railroads are forbidden to exact from employees, without their written consent thereto, first obtained in every instance, any portion of their wages (1) for the maintenance of any hospital, reading-room, library, gymnasium, or restaurant: Ind. 4044a.

(2) For the benefit of any relief association or insurance purposes: Md. 1890,443.

In Iowa it is made a penal offence for any person, agent, or company having discharged any employee to prevent, or attempt to prevent, by word or writing, his obtaining employment with any other person or company, except by furnishing in writing a truthful statement of the cause of such discharge; and the company is liable in treble damages to the employee in case of such black list: Io. 1888,57.

New statutes of several of the western states prohibit "black-listing." Thus in Missouri any person who shall make or publish such a list, or make any mark against a person's name with any false statement concerning such person, or publish that any one is a member of any secret organization, for the purpose of preventing such person from the securing of employment, or causing his discharge by any railroad or any company, is guilty of a misdemeanor, punishable by fine of one thousand dollars and imprisonment: Mo. 1891, p. 122.

The unpaid wages of any such servant or employee, then earned at the contract rate, without abatement or deduction, shall be and become due and payable on the day of such discharge, and if the same be not paid, shall continue at the same rate until paid: Ark. 1889,61,1.

The employees of a railroad are entitled to thirty days' notice from the company before their wages can be reduced; and in cases of a reduction the employees are entitled to receive such thirty days' wages at their contract price for a term of thirty days after such notice given. Such notice is given by posting about the stations; provided that the employee shall, within fifteen days from the date thereof, inform such railway by posting like notices whether he will or will not accept such reduction, and if no such information is given, the employee shall forfeit his right to such notice, and said reduction shall take effect at the date of the notice, instead of the expiration of the thirty days: Tex. 4259a.

In Texas, railroads are required, whenever they discharge any employee, or his term of service expires, to pay such employee the full amount due him within fifteen days, under payment of a penalty of twenty per cent additional as damages: Tex. 4259b.

§ 8552. **Liens upon Foreclosure, etc.** No railroad can give a mortgage or other lien valid against judgments and executions for materials furnished, or work and

labor done or damages done in the operation of such railroad : Tenn. 1271 ; Ark. 1887,70 ; Mon. G.L. 707. Compare Art. 864.

And such lien is valid as against lessees, trustees, or beneficiaries : Ark., Mon.

It lasts one year before suit brought : Ark.

Whenever a railway has been placed under a receiver, it is his duty to report to the court the amount due by said railway, or the persons who were operating the road at the date of his appointment, to employees and laborers, and the court orders him to pay out of the first receipts and earnings, after paying current operating expenses during his administration, the wages of all such employees, etc., which had accrued within six months prior to his appointment : Wis. 1769. See also Art. 891.

Whenever any railway corporation in this state shall become the successor of a pre-existing railway corporation, it shall become charged and liable for the amount then due the employees and laborers upon said road, for a period not exceeding six months prior to becoming such successor : Wis. 1815a.

Next in the order of lien to the existing mortgage debt of the old road shall stand the amounts due the persons for labor performed, wood, and other such materials furnished the old company in running the road, damages for killing stock, and right of way ; provided that all the property of said company shall be liable for damages recovered against said company for stock killed or injured by them, and exempt from mortgage liens : Ind. 3940.

When the property of a railroad or manufacturing establishment is assigned for the benefit of creditors, or comes into the hands of any receiver, or is otherwise distributed for operation of law or action of the company, the employees and the persons who have supplied materials have a lien upon such property superior to any mortgage ; provided that no president, or other agent or officer, or any director or stockholder, shall be deemed an employee : Ky. 70,1 & 2, App.

So, no assignment, mortgage, or transfer can be made while debts to contractors and workmen for construction or repairs remain unpaid, without their written consent : Pa. Assignments, 1.

When such railroad is sold or taken into possession of court, the wages due to employees for work done within three months next before the sale or seizure, and claims for injuries to persons or property inflicted within six months before, shall have a first lien upon the proceeds of sale or net earnings of the railroad while in possession of the court : Ky. p. 768, § 3.

**§ 8553. Stockholders' Liabilities.** All the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services for thirty days' service performed for such company, but shall not be liable to an action therefor before an execution shall be returned unsatisfied, in whole or in part, against the corporation : N.Y. 1850,140,10 ; N.C. 1940.

The stockholders shall be individually liable to laborers, their executors, administrators, and assigns, for all labor done in the construction of said road that shall remain unpaid after the assets of the corporation shall have been exhausted : Ind. 3934 ; Mich. 3385. See also § 8630.

Before such laborer or servant shall charge such stockholder for such thirty days' services, he shall give him notice in writing, within twenty days after the performance of such service, that he intends so to hold him liable : N.Y. 1850,140,10 ; N.C. 1940.

And shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned : N.Y. 1850,140,10 ; N.C.

Every such stockholder against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in said corporation, in ratable proportion : N.Y. 1850,140,10 ; N.C. ; Mich.



§ 8554. **Duties of Employees to the Company.** (For public duties, see § 8861.) If any engineer, in furtherance of any combination or agreement, shall wilfully and maliciously abandon his locomotive at any other point than the regular schedule destination, he is liable to a small fine and imprisonment : Ill. 114,108.

So, any person obstructing the regular operation of any railway wilfully and maliciously and not of due process of law : Ill. 114,109.

Also if he wilfully injure any railroad or rolling stock so as to prevent the use of the same : Mo. 2610 ; Tex. 4226a.

Any person or persons who shall, by force, threats, or intimidation of any kind whatever, against any railroad engineer or engineers, or any conductor, brakeman, or other officer or employee, employed or engaged in running any passenger train, freight train, or construction train running upon any railroad in this state, prevent the moving or running of said passenger, freight, or construction train, shall be deemed guilty of an offence : Tex. 4226a,1.

So, two or more persons conspiring together to obstruct or impede by any act or by intimidation the regular operation and conduct of the business of any railroad, or other corporation, firm, or individual in the state : Ill. 114,110.

This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company or such other corporation, firm, or individual, whether by concert of action or otherwise, except as above provided : Ill. 114,111.

It is made a misdemeanor for engineers, or other railroad employees, engaged in a strike, or with a view to incite others to such strike for the furtherance of any combination to bring about such strike, to abandon the engine in his charge when attached to a train at any place other than its destination ; or to refuse or neglect to continue to discharge his duty or to proceed with said train to its destination. And so, whether the strike is organized or attempted upon any other railroad, and such engineer, etc., refuses to aid in the movement of cars upon the tracks of the company employing him : N.J. R.Rs. 173, 174.

It is also a misdemeanor to interfere with or molest any engineer or employee engaged in his duty in furtherance of such strike : N.J. R.Rs. 175.

Or to obstruct any track, injure, or destroy the rolling stock or other property of any railroad, to take possession or remove the same, or prevent the use thereof by such railroad or its employees, or to induce any employee, by offer of recompense, to leave the services of any railroad company while in transit : N.J. R.Rs. 176.

## **Art. 856. Reports.**

§ 8560. **Annual Report.** (For tax returns, see Art. 899, § 8993 ; for reports to stockholders, see § 8534). Every railroad<sup>a</sup> must make an annual report to the governor or legislature,<sup>b</sup> under oath, (1) of its treasurer and superintendent : Ct. 1889,172 ; N.Y. 1890,565,57 ; Pa. R.Rs. 116,136 ; Ind.<sup>a</sup> 3918 ; N.C. 1959 ; Tex. 4249 ; 1885,68,3 ; Ark. 5472 ; Cal. 5480 ; Dak. Civ. C. 473 ; Nev. 1889, 114 ; N.M. 2686.

(2) Of its treasurer : N.H. 157,17 ; Me.<sup>a</sup> 1891,6 ; 51,60 ; Cal. The directors : Mass. 1889,328 ; Ill. 114,24 ; N.M.

(3) Of its president : N.H. ; N.J. R.Rs. 51 ; O. 251 ; Wis. 1795 ; Io. 1280 ; Kan. 23,174 ; Neb. 16,88 ; N.C. 1959 ; Ore. 4026 ; Nev. ; Mon. G.L. 701.

(4) Of "the proper officers." Ill. 114,131 ; Mich. 3291 amt. ; Minn. 2562 ; W.Va.<sup>a</sup> 29,67 ; 54,54 ; Miss. 1890 ; S.C. 1438 ; Mo. 2682 ; Neb. 1887,60,19 ; Ky. 90a,VI.9 ; Col. 1885, p. 311,11 ; U.S.<sup>b</sup> 1887,104,20.

(5) It is not sworn to : Md. 23,176 ; R.I. 158,41 ; Io.<sup>a</sup> 1888,28,22 ; Minn.<sup>a</sup> 501 ; Ala.<sup>b</sup> 1137.

It must be filed on or before Jan. 15th : Ind., Ark. Within thirty days after the determination of its fiscal year : Pa. ib. 136. At the annual directors' meeting : Mo. Jan. 10th : Ind. In January : Io., Minn., Wis., Neb., Md., R.I., N.J., Dak. Sept. 1st : Me., Mass., O., Ill., Ky., Ore., Nev., Col., Ala., S.C. Sept. 15th : N.H., Kan., Ct. April 1st : Mich., Mo., W.Va. Feb. 10th : Wis. Nov. 15th : N.C. Dec. 1st : Pa., Me., Mon. Oct. 20th : Tex. Dec. 20th : N.Y. March 1st : N.M. Feb. 20th : Cal.

And includes operations up to Oct. 30 preceding : Pa. R.Rs. 116. Sept. 30th : N.C., Me., N.Y. Dec. 31st : Pa., Mich., Wis., Mo., Ark., W.Va., Cal., Dak., Nev., N.M. June 30th : N.H., Mass., Ct., O., Ill., Ky., Me., Kan., Ore., Nev., Col., S.C., Ala., Miss. Oct. 1st : Tex. Nov. 30th : Mon.

NOTES. — <sup>a</sup> "Whose road lies wholly or partly within the state : " Pa., Nev. "Incorporated or doing business within the state : " Ind., Ill., Mich., Wis. "Subject to the provisions of this act : " U.S.

<sup>b</sup> To the secretary of state : Io., Ark., Cal., Ore., Nev., N.M. The comptroller : Md., Tex. The auditor : Pa., Ind. 3985, Neb., Minn., W.Va., Dak., Mon. The railroad commissioners : N.Y., O., R.I., Mass., Me., Ill., Mich., Wis., Kan., Mo., Io., Neb., Ky., N.Dak., Col., S.C., Ala., Miss. But such officer transmits the report to the legislature : Pa., Io., Minn., Neb., Md. To the governor : Mo.

§ 8561. **Contents.** Said report shall contain as to every railroad corporation doing business in this state : —

(1) The amount of capital stock : Ind. ; Ill. ; Minn. ; Mich. ; Io. 1878,77,4 ; 1888,28,22 ; Kan. 23,173 ; Neb. 1887,60,19 ; Md. ; N.C. ; Ky. 90a,VI,9 ; Mo. ; W.Va. ; Ark. ; Nev. ; Tex. ; Cal. ; Dak. ; N.Dak. 1890,122,17 ; Mon. G. L. 701 ; N.M. ; U.S. 1887,104,20.

The par value : Mo.

The amount subscribed : Ill., Mich., Wis., Io., W.Va., N.C., Mo., Ore., Nev., N.M.

And by whom : Ill., Mich., N.C., Mo., Ore.

Actually paid in : N.J., Ind., Ill., Mich., Io., Minn., W.Va., N.C., Mo., Ore., Ky., Tex., Cal., Dak., Mon., N.M.

And by whom : Ill., Mich., N.C., Mo., Ore., Ky.

"The amount paid thereon : " Ill., Mich., Io., Neb., Wis., W.Va., Ore., Nev., N.M., N.Dak., U.S.

"The manner of payment : " Io., Minn., Neb., N.Dak., U.S. Its value : W.Va.

"The amount of cash paid to the corporation for its original capital stock : " Mich.

The names of the owners of its stock, and the amounts owned by them respectively, and the residence of each stockholder, as far as known : Ill. 114,172 ; Mich., Mo., Ore., Ky.

The number of stockholders : Io., Minn., N.Dak., U.S.

(2) The amount of its preferred stock, if any, and the condition of its preference : Io., Kan.

(3) The amount of funded debt : N.J., Ill., Mich., Wis., Io., Minn., Kan., Neb., W.Va., N.C., Ky., Mo., Ore., N.Dak., Mon., U.S.

And the rate of interest : Io., Kan., N.C., Ore.

The amount of floating debt : N.J., Ind., Ill., Mich., Io., Minn., Kan., W.Va., Neb., N.C., Mo., Ore., Ky., N.Dak., Mon., U.S.

The total amount of interest-bearing indebtedness : Wis.

"The interest paid thereon : " Wis., Io., Minn., Neb., N.Dak., U.S.

"How and when created : " Ore.

"The amount of its liabilities : " Ill., Mich., Io., Mo., Ore.

The amount and nature of its indebtedness (distinguishing the first, second, and third mortgage bonds, and the unsecured indebtedness, Io.), and the amount due the corporation : Ind., Io., Ark., Tex., Nev., N.M., Cal., Dak., N.M.

And if any part of such indebtedness has been incurred in consequence of the construction, maintenance, repair, removal, or operation of any part of such railroad which

is not in this state, or for equipment of such part, such railroad commissioner shall ascertain and determine, in such manner as he shall think just and equitable, how much of its indebtedness is justly chargeable to that part of said railroad that is in this state, and how much interest shall have been paid by such corporation during such year ending on the thirty-first day of the next preceding December on that part of such indebtedness which is justly chargeable to that part of said railroad that is in this state : Wis. 1795.

(4) The amount of its assets : Ill., Mich., Mo.

The estimated value of the road-bed, including iron and bridges : Ill., Mich., Kan., W.Va., Ky., Mo., Ore.

"The total amount expended for graduation and masonry ; for bridges ; for super-structure, including iron : " N.C.

The estimated value of rolling stock : Ill., Mich., Kan., W.Va., Ky., Mo., Ore.

The estimated value of stations, buildings, and fixtures : Ill., Mich., Kan., W.Va., Ky., Mo., Ore.

The amount expended therefor ; for land, damages, and fences ; for locomotives, fixtures, and ploughs ; for cars, passenger and freight ; for engineering and agencies : N.C.

The estimated value of all other property owned by such corporation (with a schedule of the same, not including lands granted in aid of its construction) : Ill., Mich., Io., Kan., W.Va., Ky., Mo., Ore.

The cost and actual present cash value of its road and equipment, including permanent way, buildings, and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business : Io., Kan., Neb., N.D.

The surplus fund, if any : Io., Minn., Neb., N.D.

The cost and value of the carrier's property, franchises, and equipment : Minn. 501 ; Neb. ; N.D. ; U.S.

Of the costs of said road and equipments : N.J., Ind., Neb., N.C., Nev., Mon.

So, the actual cost of each railroad, or so much of it as is in the state : Wis., Mo.

The estimate cost of line projected : Mo.

The whole cost of road, showing the amount expended for the right of way, for bridging, grading, iron, and buildings respectively, and for all other purposes incidental to the construction of such road : Io., Nev., N.M.

The number of engine-houses and shops : Ind., N.C., Ark., Tex., Cal., Nev., N.M. ; and of engines and cars : Ind., Mich., N.C., Ark., W.Va., Tex., Cal., Nev., Mon., N.M.

"The amount of rolling stock : " W.Va., Mo.

The amount expended for the purchase of lands, for the construction of the road, for buildings, and for engines and cars respectively : Ind. ; Ark. ; Tex. 4249 ; Cal. 5480 ; Dak. ; N.M.

The amounts due the corporation : Ind., Cal.

(5) "The length of such railroad when completed, and how much is built and in use : " Io., W.Va., N.C.

The length of single and double main track : Ill., Mich., N.C., Ky., Mo., Ore., Mon.

The length of branches, stating whether they have single or double track : Ill., Mich., N.C., Ky., Mo., Ore., Mon.

The aggregate length of siding and other tracks not above enumerated : Ill., Mich., W.Va., Ky., Mo., Ore., Mon.

The gauge : Mon.

The weight of rail per yard : Ill., N.C.

(6) The names and places of residence of its officers : Ill., Mich., Io., Kan., Ky., Mo., Ore.

(7) The number of acres of land donated or granted to them ; by whom, and what disposition has been made of said grants or donations : Io. 1280.

The sales of lands donated by the state, and the quantity remaining unsold: Tex.

The number of acres originally granted in aid of construction of its road by the United States or by this state; and number of acres of such land remaining unsold: Io. 1878,77,14; Minn.; Kan.; N.D.

The number of acres of land sold during the year, and price received therefor: Mich., Minn., N.D.; and number of acres still owned by the company not used for corporate purposes, and the value thereof: Mich., Minn., Kan., N.D.

(8) Shall include a detailed statement of all particulars respecting the railroad, its business, receipts, and expenditures during the year, in such form as shall be from time to time prescribed by the board under section 26: Mass. 112,81; R.I. See also § 8562.

Of the operations of the said company during the year preceding: N.J., Pa.

Such statistics of the road and of its transportation business for the year as may, in the judgment of the commissioners, be necessary and proper for the information of the general assembly, or as may be required by the governor. Such report shall exhibit and refer to the condition of such corporation on the first day of July of each year, and the details of its transportation business transacted during the year ending June 30th: Io.

(9) Every railroad doing business in the state must report to the commissioners, on or before the twenty-fifth day of each month, its earnings from every source for the preceding calendar month: Mich. 3312a. So, each quarter: Miss. 1884,23,15.

Its monthly earnings for the transportation of passengers during the same time: Ill., Mich., N.C., Ky., Mo., Ore., U.S.

Its monthly earnings for the transportation of freight during the same time: Ill., Mich., N.C., Ky., Mo., Ore., U.S.

Its monthly earnings from all other sources respectively: Ill., Mich., N.C., Ky., Ore., U.S.

So, the (yearly) income from passengers, freight, and other sources: N.J., Ind., Wis., Io., Minn., Neb., Md., W.Va., Ark., N.D., Mon., N.M.

Both gross and net: Wis., Io., Minn., Neb., Md., Mo., Nev., N.D.

"The amount received for the transportation of passengers, property, and mails, for interest, and from all other sources respectively:" Io., Ark., Tex., Nev., Cal., Dak., N.M.

The total net earnings resulting from the operation of any such railroad during the next preceding year, ending on the thirty-first day of December, or of that part of the same which is in this state: Wis. 1795.

(10) The expenditures for working the said roads, including repairs, maintenance of way, motive power, and contingencies: N.J., W.Va., Cal., Dak., Mon., N.M. "The operating and other expenses:" U.S.

The amount of expense incurred in the running and management of passenger trains during the same time: Ill., Mich., N.C., Ky., Mo., Ore.

Including amounts paid for use of palace and sleeping cars: Mich.; and interest: N.C.

The amount of expense incurred in the running and management of freight trains during the same time; also the amount of expense incurred in the running and management of mixed trains during the same time: Ill., Mich., N.C., Ky., Mo., Ore.

All other expenses for the maintenance of way: Ill., Mich., Ky., Ore.

All other expenditures, either for management of road, maintenance of way, motive power and cars, or for other purposes: Ill., Mich., Io., Minn., Neb., Ky., Mo., Ore., N.D., Mon.

All other expenses incurred in the running and management of the road during the same time, including the salaries of officers, which shall be reported separately: Ill., Mich., Minn., Neb., Ky., Mo., Ore.

The amount expended for repairs of road and maintenance of way, including repairs and renewal of bridges, and renewal of iron: Ill., Mich., Minn., Neb., N.C., Ky., Mo., Ore., Mon.

The amount expended for improvements (their character, U.S.), and whether the same are estimated as a part of the expenses of operating or repairing the road, and, if either, which : Ill., Mich., Io., Minn., Neb., Ky., Mo., Ore., N.D., U.S.

The amount expended for motive power and cars : Ill., Mich., Ky., Mo., Mon.

The amount expended for station-houses, buildings, and fixtures : Ill., Mich., Ky., Mo., Ore.

The amount paid for repairs of the road, buildings, engines, and cars respectively : Tex., Cal., Dak., N.M. ; for fuel, taxes, and interest, specifying the indebtedness on which the same is paid ; for wages of employees ; for salary paid to each officer, where it exceeds one thousand dollars per annum : Tex., N.M. ; the amount paid for any other purpose incidental to the business of transportation, so as to give a complete statement of the entire annual expense of the corporation : N.M.

The amount of loss to the corporation from casualty : Tex.

The amount paid for repairs, cars, engines, and salaries : Ind., Ark., Tex., Cal., Nev., Dak.

"The cost of repairs and incidental expenses : " Minn., Neb., Md.

The amount paid for officers and employees : Ind., Io., Minn., Neb., Mo., N.D., U.S.

For repairs of road-bed and railway, excepting cost of iron, which shall be the cost of labor and materials used during the year ; also use and cost of engines engaged in ballasting ; also the renewal and repairs of gravel and stone cars, and all items of cost connected with keeping the road in order ; for depreciation of way ; length, in feet, of iron used in renewals, with weight and cost ; repairs of buildings, fences, and gates ; taxes on real estate ; expenses, repairs, and depreciation of machinery and personal property itemized ; incidental expenses, including fuel, oil, clerks, agents, watchmen, and stationery ; expenses of employees ; loss and damage of goods and baggage ; damages for injuries to persons and property, including damages by fire and cattle killed ; contingencies ; total expenses of operating road. The above statements are to be made without reference to the sums actually received or paid during the year : N.C. 1959(30-42).

(11) The number and amount of dividends, and when made, and in what manner such dividends have been paid : N.J., Ind., Io., Minn., Neb., Md., N.C., Ark., Tex., Cal., Nev., Dak., N.D., Mon., N.M., U.S.

(12) The amount of profit : Dak.

The balances of profit and loss : Io., Minn., Neb., N.D., U.S.

Payment to surplus fund, and total amount of said fund : N.C. 1959 ; U.S.

(13) The number of tons of through freight carried during the same time : Ill., Mich., Ky., Mo., Ore., Mon.

The number of tons of local freight carried during the same time : Ill., Mich., Mo., Ky., Ore., Mon.

The amount of freight, specifying the quantity in tons or other usual mode of measurement : Io., Tex., Cal., Nev., Dak., N.M. "The number of tons, and miles carried : " N.C.

The amount of freight, specifying the quantity in tons, of the products of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise, and other articles : Ind. ; N.C. 1959(29) ; Ark. ; Tex. ; Mon.

(14) The number of miles run by passenger, freight, and other trains, respectively : Ind., Ill., Mich., N.C., Tex., Ore., Ky., Mon.

Including mileage of rented cars : Mich.

(15) The number of men employed, and their occupation : Ark., Tex., N.Dak., U.S.

(16) The rate of fare for passengers for each month during the same time, through and way passengers separately : Ill., Mich., Mo., Oré., Ky., Mon.

The tariff of freights, showing each change of tariff during the same time : Ill., Mich., Mo., Ore., Ky., Mon.

A copy of each published rate of fare for passengers, and tariff of freight in force or issued for the government of its agents during the same time : Ill., Mich., Mo., Ore., Ky., Miss. Interstate or otherwise : Miss. 1888,26,5.

(17) Whether the rate of fare and tariff of freight in such published lists are the same as those actually received by the company during the same time ; if not, what were received : Ill., Mich., Mo., Ore.

(18) Average weight in tons, of two thousand pounds, of passenger trains, exclusive of passengers and baggage : N.C. 1959(27).

The average amount of tonnage that can be carried over each road in the state with an engine of given power : Io. 1878,77,4 ; Kan.

Average weight in tons of freight trains, exclusive of freight : N.C. 1959(28).

Average rate of speed adopted by freight trains : N.C. 1959(26).

So, the highest rate, respectively : Mon.

Average rate of speed adopted by ordinary passenger trains, including stops : N.C. 1959(25).

The number of miles, rate of fare, and number of miles travelled charged for the respective classes per mile : N.C. 1959(23).

The number of tons of freight carried one mile, and amount received per ton : Ky.

Average distance of haul, and cost : Ky.

(19) What express companies run on its roads, and on what terms and on what conditions ; the kind of business done by them (and whether they take their freights at the depots or at the office of such express companies : Ill.): Ill., Mich., Mo., Ore.

What freight and transportation companies run on its road, and on what terms : Ill., Mich., Mo., Ore., Ky.

Whether such freight and transportation companies use the cars of the railroad or the cars furnished by themselves : Ill., Mich., Mo., Ore., Ky.

Whether the freight or cars of such companies are given any preference in speed or order of transportation, and if so, in what particular : Ill., Mich., Mo., Ore., Ky.

What running arrangements it has with other railroad companies, setting forth the contracts for the same : Ill., Mich., Mo., Ore.

(20) In said annual report they shall set forth copies of all contracts or leases made with other railroad corporations during the year, and specify the receipts and expenditures under the same : Mass. 112,81.

(21) Such report shall state whether any fatal accident or serious injury has occurred to a passenger or other person upon the road during the year, and, if so, the cause of such accident or injury, and the circumstances under which it occurred : Mass. 112,81 ; N.J. R.Rs. 51 ; Mon. Compare also § 8575.

The number of persons injured in life and limb, and the cause of the injury, and whether passengers or persons employed by the corporation ; whether any such accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation : Wis. ; N.C. 1959 (48) ; Tex. ; Ark.

The number and kind of farm animals killed, and damages paid therefor : Mon.

(22) Special provision is made for reports of the quantity and kinds of coal and coke mined, received, and shipped : Pa. R.Rs. 140-143.

And of the freight tonnage of the products of the forest, animals, vegetable food, and other agricultural products, manufactures, merchandise, and other articles : Ind.

For a report of the directors and officers, made by the secretary within thirty days after each election : O. 260.

(23) And a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet : Io. 1888,28,22 ; Minn. 501 ; Neb. ; N.Dak. ; U.S.

(24) Such detailed reports shall also contain such information in relation to rates or regulations concerning fares or freights, and agreements, arrangements, or contracts

with express companies, telegraph companies, sleeping and dining car companies, fast freight lines, and other common carriers, as the commission may require, with copies of such contracts, agreements, or arrangements: Io. 1888,28,22; Minn. 501; Neb.; N.Dak.; Ala. 1136; Miss. 1884,23,12; U.S.

(25) "The whole number of miles thereof within this state, and the whole number of miles without the same, including its branches in and out of the state; its railroad track in each county in this state through which it runs, and a fair cash value per mile of such railroad in each county; its earnings from its telegraph lines, which shall be stated separately; such earnings within this state on way freight and passengers, and the proportion of such earnings in this state on through freight and passengers carried over its lines in and out of the state to be ascertained by the number of miles the same were carried by it within and the number of miles without the state:" W.Va. 29,67.

(26) The number of wooden bridges, and aggregate length in feet; number of iron bridges, and aggregate length in feet; number of stone bridges, and aggregate length in feet; number of wooden trestles, and aggregate length in feet; the greatest age of wooden bridges; the average age of wooden bridges; the greatest age of wooden trestles; the number and kind of new bridges built during the year, and length in feet; the length of road unfenced on either side, and the reason therefor; cost of construction; cost of right of way; cost of equipment; all other items embraced in cost of road and equipment, not embraced in three preceding questions; the maximum grade, with its length in main road, and also in branches; the shortest radius of curvature with length of curve in main road and also in branches; total degrees of curvature in main road, and also in branches: Mon.

§ 8562. The Form shall be prescribed by the commissioners, uniform for all railroads: N.H. 155,22; Mass. 112,26; Me.; R.I.; N.Y. 1890,565,158; Pa. R.Rs. 115,135; O. 252; Neb.; Mich. 3398; Ore. 4021; Col. ib. 11; S.C. 1463; Miss. 1884,23,15. So, "suitable blanks are provided" by them: N.H. 156,17; O.; Mich.; Wis.; Ala. 1137; Miss.; Mon.

"It shall embrace such facts as the commissioner shall require, and in addition thereto such as the corporation deem expedient:" R.I. 158,41; Neb. "Such other facts as the auditor-general shall require:" Pa. As the railroad commissioners require: Ill. 114,173; Wis.; Mo.; Mich. 3292; Io. 1888,28,22; Kan.; Ky. 90a,VI,10; S.C. 1467; Ala. 1136. As are necessary to a full statement of the affairs and condition of the corporation: Io., Minn., Kan., Neb., Md., Mo. It shall conform to the returns required by the interstate commerce commission: Mass. 1889,328; Me. 1891,6; Ct. 1889,172.

The board may, from time to time, make changes or additions thereto, giving the corporation (1) one year's notice of such as require an alteration in the method of keeping their accounts: Mass. 112,26; Ore. 4021; S.C. (2) "Seasonable notice:" N.H. (3) Six months' notice: Mich. 3398; N.Y. 1890,565,158.

Every railroad corporation which has taken a lease of the railroad of another corporation shall, during the continuance of such lease, make all the returns required of the lessor, and pay the sum required by the preceding section; and during the continuance of such lease the lessor shall not be required to make such returns or payment, if, when requested by the lessee, the lessor furnishes all the information in its possession needed to make such returns: Mass. 112,83.

But if a railroad in this commonwealth is leased to a corporation or party in another state, the lessors in this commonwealth shall make the annual return and payment: Mass. 112,83.

It shall be the duty of the proper state officer to arrange the information contained in such reports in a tabular form and compare the same together with the said reports

in a single document for printing for the use of the general assembly, and report the same to the general assembly on the first day of its session : N.C. 1959(49) ; Md. 23,176. Compare also Art. 857.

The secretary of each railroad corporation shall mail to every stockholder thereof, whose post office address is known, a copy of its annual report, and shall file a certified copy thereof with the railroad commissioner, on or before the first day of February : Wis. 1843.

A copy of such report must also, at the same time, and by the corporation, be published in a newspaper printed in the county in which the main office of the corporation is situated, or at the capital of the territory, and the territorial auditor must incorporate such report in his biennial report to the governor : Dak. Civ. C. 473.

§ 8563. **Books and Tabulation.** Compare § 8577. The books of the corporation shall be so kept that returns may be made in exact conformity with the form thus prescribed ; and the accounts shall be closed on the thirtieth day of June in each year, so that a balance sheet of that date can be taken therefrom and included in the return : Mass. 112,81 ; 1889,328.

The said board of commissioners may within its discretion, for the purpose of enabling it the better to carry out the purpose of this act, (if in the opinion of the commissioners it is practicable to prescribe such uniformity and methods of keeping accounts,) prescribe a period of time within which all common carriers subject to the provisions of this act shall have as near as may be a uniform system of accounts, and the manner in which such accounts shall be kept : Vt. 1886,23,13 ; Minn. 501b ; U.S. 1887,104,20 ; Io. 1888, 28,22 ; Neb. 1887,60,19 ; Tex. 1891,51,12.

§ 8564. **Other Reports.** Railroad corporations shall, on the first day of January of each year, lodge with the secretary of state the names of their clerks and treasurers, and their place of business within this state : Vt. 3337.

So, to the commissioner, a list of officers and directors : O. 26a ; Mo. 2571.

And copies of all contracts with other railroads, that the provisions of § 2569 (see § 8730) be not infringed : Mo.

Every railroad corporation shall keep an account of the toll, freight, and passage money received at their depots and offices of receipt, and keep the same at all times in readiness for the examination of the general assembly, or the railroad commissioner or any committee that may be appointed by the general assembly : R.I. 158,23.

As soon as a railroad or any part thereof is in operation, the president is required to file a sworn statement of the cost of the road with the comptroller of the state, and annually thereafter on the first Monday of January of each year : N.J. R.Rs. 107.

Every railroad is required to file with the secretary of state in July in each year the special report setting forth explicitly the number of shares of stock actually issued, sold, pledged, or disposed of by the company to the date of such report ; and the amount of stock issued during the year last past, with the amount received therefor in money, and the amount received in property and other effects : Mich. 3410 ; Minn. 2524.

When any railway has been completed and opened for use, the corporation constructing the same shall report to the next general assembly, under oath, the total cost thereof, specifying the amount expended for construction, engines, cars, depots, and other buildings, and the amount of all other expenses, together with the length of the railway, the number of planes, with their inclination to the mile, the greatest curvature, the average width of grade, and the number of ties per mile : Io. 1303.

The president and directors of canal, railroad, plank-road, and turnpike companies, whether wholly or partly within this state, are required to keep an account of all products of this state intended for sale abroad by them transported out of the state, or to any shipping port therein, and report the same to the governor at each session of the general assembly : N.C. 1715.



It shall be the duty of the directors of every such corporation or company, within thirty days after the time fixed for holding such meeting, to make a report to the railroad commissioners, of the number of miles of road completed, the cost per mile of that finished, and other estimated cost of the projected portion, the amount of rolling stock, the gross and net receipts from its passenger earnings and from its freight earnings separately, the amount of stock subscribed and the amount paid, and such other items as may be necessary to show the condition of the company, or may be required by the commissioners: Mo. 2577.

The president or superintendent of every railroad company doing business in this state shall report annually under oath to the comptroller or governor the true status of said railroad, and such other matters and things as may be inquired about by said comptroller or governor: Tex. 4115a,3.

All railroads must file a copy of their charter and a list of officers with the secretary of state: Ga. 1883, p. 488.

§ 8565. **Penalties.** A railroad which neglects to make its annual report, and still neglects after three months' notice by the comptroller, shall forfeit its charter: Tex. 4280.

In other states, it is subject only (in Texas, also) to a heavy penalty: Me. 51,60; N.Y.; N.J. R.Rs. 54; Wis. 1795; W.Va. 29,67; N.C. 1960; Tex. 4250; Ore. 4027; Nev.; Ala. 1137; Miss. 1884,23,16.

Or the officer whose duty it is incurs the penalty: O. 253; Col. ib. 11.

So, any person making false returns under this article is liable to a heavy fine (or imprisonment in the penitentiary, Ore.): O. 253; Ore. 4028.

To the penalties of perjury: Miss. ib. 17.

If a railway neglect to make annual report, any stockholder may file petition in court, which appoints three disinterested persons to make the report for it: Io. 1281-2.

§ 8566. **Specimen Forms.** The forms for railroad reports in the states of Connecticut, New York, Ohio, and South Carolina are here printed in full. For other states, see § 8561.

## CONNECTICUT.

The railroad commissioners shall, on or before the first day of September, annually, furnish to the company or trustees operating each railroad duplicate blank forms for returns, as follows.

Return of the ——— railroad company for the year ending September 30, 18—.

### EARNINGS AND EXPENSES.

#### *Statement of Gross Earnings.*

From passenger transportation.

“ freight transportation.

“ United States mails.

“ express.

“ rents.

“ other sources (specifying each).

Total gross earnings.

#### *Statement of Operating Expenses.*

For repairs of road-bed and track.

“ “ bridges.

“ “ fences.

“ “ buildings and fixtures.

For repairs of locomotives.

“ “ cars.

“ “ machinery and tools.

For salaries and labor, not included above.

“ fuel for locomotives and cars,	{	— tons of coal . . . . .	\$
		— cords of wood . . . . .	\$
“ fuel for stations and shops,	{	— tons of coal . . . . .	\$
		— cords of wood . . . . .	\$
“ oil and waste.			
“ damages, losses, and gratuities,	{	to persons . . . . .	\$
		to property . . . . .	\$
“ insurance.			
“ rents of other roads (naming each).			
“ other operating expenses (in detail).			
Total operating expenses.			
Net earnings (or deficit).			

*Statement of the Costs of Betterments charged to Operating Expenses Accounts.*

Specify the costs of betterments and the account to which the same is charged.

TOTAL RECEIPTS AND EXPENDITURES.

*Statement of Receipts from all Sources.*

- Cash on hand at date of last report.
- Bills and accounts receivable at date of last report.
- Receipts from gross earnings, as stated.
- “ “ other sources (specifying each).
- Total.

*Statement of Total Expenditures.*

- For operating expenses (as stated).
- “ taxes.
- “ interest.
- “ dividends : number, — ; rate per cent, — ; date when paid.
- “ construction, equipment, or property account, giving each separately.
- “ any other purposes (in detail).
- Bills and accounts receivable this date.
- Cash on hand to balance.
- Total.

GENERAL BALANCE SHEET.

Showing condition of accounts at close of business, September 30, 18—.

*Assets.*

Construction account.	Materials on hand.
Equipment account.	Accounts receivable
Other permanent investments (in detail).	Other assets (in detail).
Sinking fund.	Cash on hand.
	Total.

*Liabilities.*

Capital stock.	Accounts payable.
Bonds payable, or funded debt.	Other liabilities (in detail).
Bills payable, or unfunded debt.	Profit and loss.
	Total.

*Present or Contingent Liabilities, not included in Balance Sheet.*

- Bonds guaranteed by this company, or a lien on its road.
- Overdue interest on the same.
- Overdue interest on bonds issued by this company.
- Any other liabilities.

## GENERAL INFORMATION.

*Capital Stock.*

Capital stock authorized by charter.

" " " by vote of company.

" " issued, — full shares of \$— each.

" " " — shares, subject to further assessment, \$—.

Amount credited on — shares not issued.

Stock issued for cash.

Stock issued for bonds.

Stock issued for stock of other corporations (naming such corporations).

Stock issued for undivided earnings.

Stock issued for increased valuation of road or equipment, or both.

Stock issued without any payment thereon, or in any manner or for any purpose not named above, stating the amount in each case separately, and including the remainder of the stock issued.

Amount of stock held in Connecticut.

Number of stockholders residing in Connecticut.

Whole number of stockholders.

*Bonds or Funded Debt.*

Describe all issues in the following manner (and if any bonds issued by other parties have been guaranteed by this company, or a lien on its road, describe them in the same manner, and state also by whom issued), viz.:—

First mortgage due —. Rate of interest, —.

Interest paid to —.

*Description of Road.*

Date when road or different portions thereof were opened for public use, viz.:—

From — to —.

	IN CONN.	TOTAL.
Length of main line from — to —.		
" of branches and names from — to —		
" of all branches.		
" of road (main line and branches) owned by the company.		
" of sidings or other tracks not included above.		
" of track of road, including branches and sidings, in single track miles.		
" of track laid with steel rails (weight per yard, — lbs.).		
Weight per yard of iron rails in main line, — lbs.		
Weight per yard of iron rails in branches, — lbs.		
Miles of track laid with steel rails during the year (No. of tons, —; weight per yard, — lbs.; cost, \$—).		
Miles of track laid with new iron rails during the year (No. of tons, —; weight per yard, — lbs.; cost, \$—).		
No. of new ties put in track during the year (cost \$—).		
Aggregate length of wooden bridges, in feet.		
No. of spans of twenty-five feet or over.		
Aggregate length of iron bridges, in feet.		
No. of spans of twenty-five feet or over.		
Aggregate length of stone arch bridges, in feet.		
No. of highway crossings over the track.		
" " " under the track.		
" " " at grade.		
" " " " with gates.		
" " " " flagmen.		
" " " " electric signal.		

No. of railroads crossed at grade, and names of each.

Name, termini, and length of each road operated by this company under lease or contract.

Length of all roads operated by this company.

No. of stations on main line.

“ “ “ branches.

“ “ “ leased lines.

*Equipment.*

No. of locomotives (not including switching engines).

Average weight of same, including tender, water, and fuel.

No. of switching engines.

“ passenger cars.

“ baggage and mail cars.

“ merchandise cars.

“ coal, gravel, and other cars.

“ locomotives equipped with train brakes.

“ cars “ “ “

Name of brake.

No. of passenger train cars with patent platform, buffer, and coupler.

Name of patent.

*Fares, Freight, etc.*

Average rate per mile received from passengers on roads operated by this company, excluding season ticket passengers.

Average rate per mile for season ticket passengers, reckoning one round trip per day to each ticket.

Average rate of fare per mile from all passengers.

Total number of passengers carried.

Passenger mileage, or passengers carried one mile.

Miles run by passenger trains.

“ “ freight trains.

“ “ all other trains.

Total miles run.

Total number of tons of freight carried.

Freight mileage, or tons carried one mile.

Average rate of freight per ton per mile.

No. of men employed in operating road, including officers.

Statement of each accident in detail.

Names and residences of officers.

Proper address of the company : Ct. 3586.

All companies or trustees receiving such blank forms shall return one of them to the commissioners on or before the fifteenth day of November, in each year, with all questions fully answered, except where the answers would be “none” or “nothing,” in which case the question itself may be stricken out. Said returns shall be signed and sworn to by the president and treasurer of the company, or by a majority of the trustees making the same : Ct. 3587.

Every company whose president and treasurer, or trustees, shall refuse or neglect to make such returns, shall forfeit to the state twenty-five dollars for each day of such neglect or refusal, and said commissioners shall report such forfeiture to the treasurer, and the books of every railroad company shall at all times be open to the inspection of any committee of the General Assembly appointed for that purpose : Ct. 3588.

Every railroad company shall make its annual returns strictly according to the forms provided, and if the officers or trustees find it impracticable to return all the items in detail as required, they shall in their report give the reasons why they cannot be given; but no company shall be excused for not giving such details because it does not keep its accounts in such manner as will enable it to do so. And when any such returns seem to said commissioners defective or erroneous, they shall notify the company or trustees making the same, and require the amendments of such returns within fifteen days under the same penalty as is provided for refusing or neglecting to make returns: Ct. 3589.

The officers, trustees, or receivers of every railroad company which has leased a railroad upon terms by which the rental is based upon the earnings of the leased road, shall make returns to the railroad commissioners of the leased road, separate and apart from the business of the lessee, and in the same manner that the officers of said leased railroad would be required to make returns had it not been leased: Ct. 3590.

## NEW YORK.

**History of Organization, Construction, Leasing, and Consolidation of Lines now operated by you, and Statutes authorizing the same.**

DATE OF CHARTER,.....

TABLE A.—CAPITAL STOCK AND FUNDED DEBT.

	Common.		Preferred.		Cash realized on Amount outstanding.
	No. of Shares.	Total Par Value.	No. of Shares.	Total Par Value.	
Authorized by law or charter,	_____	_____	_____	_____	_____
Issued for actual cash,	_____	_____	_____	_____	_____
Issued on account of construction,	_____	_____	_____	_____	_____
*Issued for,	_____	_____	_____	_____	_____
*Issued for,	_____	_____	_____	_____	_____
*Issued for,	_____	_____	_____	_____	_____
*Issued for,	_____	_____	_____	_____	_____
Total now outstanding,					
Grand total of Common and Preferred Stock now outstanding, \$					
Number of Stockholders,					

## FUNDED DEBT.

Designation of Lien.	Date.	Term, Years.	Interest, Rate.	When Payable.	Amount authorized.	Amount outstanding.	Cash realized on Amount outstanding.
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____

Total,

Per mile of Road owned, { Capital Stock outstanding, \$                      Cash realized on same, \$  
    { Funded Debt outstanding, \$                      Cash realized on same, \$

TABLE B.—COST OF ROAD AND EQUIPMENT.

ROAD.	Additions or Betterments during Year ending June 30, 1890.	Total Cost of Road and Equipment up to June 30, 1890.
Grading, Masonry, and Ballast,	_____	_____
Bridges,	_____	_____
Superstructure (including Ties),	_____	_____
Rails,	_____	_____
Land,	_____	_____
Land Damages,	_____	_____
Fences,	_____	_____

\* Fill in for any issues of Stock other than for Cash or Construction.

Passenger and Freight Stations,	_____	_____
Engine and Car Houses,	_____	_____
Shops, Machinery, and Tools,	_____	_____
Fuel and Water Stations,	_____	_____
Engineering Expenses,	_____	_____
Interest and Discount charged to Construction,	_____	_____
Road built by Contract,	_____	_____
Purchase of Constructed Road,	_____	_____
Telegraph Line,	_____	_____
Wharfing,	_____	_____
Total Cost of Road,		
EQUIPMENT.		
Locomotives,	_____	_____
Passenger Cars,	_____	_____
Mail, Baggage, and Express Cars,	_____	_____
Freight and other Cars,	_____	_____
Barges, Floats, and Tugs,	_____	_____
Total Cost of Equipment,		
Grand total Cost of Road and Equipment,		
Cost of Road per mile owned, \$	Cost of Road and Equipment per mile of Road owned,	\$
Cost of Equipment per mile of Road owned, \$	Cost of Equipment per mile of Road operated,	\$

A Statement shall be given, showing *briefly* (by numbers, by quantities, or by descriptions) the new work, additions or betterments made to the road and equipment, representing the several amounts that may appear in the column headed "Additions or Betterments during Year."

Total, \$

TABLE C. — INCOME ACCOUNT FOR YEAR ENDING JUNE 30, 1890.

Gross Earnings from Operation, as per Table D,	_____	_____
Less Operating Expenses (excluding all Taxes), as per Table D,	_____	_____
NET EARNINGS FROM OPERATION.	_____	\$
Income from other sources as follows, viz : —	_____	_____
	_____	_____
GROSS INCOME FROM ALL SOURCES.	_____	\$
Deductions from Income as follows, viz : —		
Interest on Funded Debt due and accrued,	_____	_____
Rentals,	_____	_____
Taxes, { On property used in operation of Road,	_____	_____
{ On Earnings and Capital Stock,	_____	_____
{ Other than above,	_____	_____
	_____	_____
NET INCOME FROM ALL SOURCES.	_____	\$
Payments from Net Income as follows, viz : —		
Dividends declared     % on \$     Preferred Stock,	_____	_____
Dividends declared     % on \$     Common Stock,	_____	_____
† Surplus or Deficit for year ending June 30, 1890,		\$
† Surplus or Deficit up to June 30, 1889.		
Add or deduct any items which may have been carried directly to Profit and loss during current year.		
	† Total Surplus or Deficit, June 30, 1890, \$	_____

DETAILED STATEMENT OF RENTALS.

_____	_____	_____
_____	_____	_____
_____	_____	_____
Total amount of Rentals deducted from Income, \$		

† If Surplus is shown, strike out the words "or Deficit." If Deficit is shown, strike out the words "Surplus or." This "Total" should agree with "Surplus or Deficiency," as case may be, as set forth in Balance Sheet.

TABLE D.—ANALYSIS OF GROSS EARNINGS AND OPERATING EXPENSES.\*

EARNINGS.		Passenger.	Freight.	Total.
Freight, Through,	\$_____	_____*	_____	_____
Local,	\$_____	_____*	_____	_____
Passengers, Through,	\$_____	_____	_____*	_____
Local,	\$_____	_____	_____*	_____
Mail,		_____	_____*	_____
Express,		_____	_____*	_____
Miscellaneous, as follows, viz. :—		_____	_____	_____
	\$_____	_____	_____	_____
		_____	_____	_____
Total Gross Earnings, as given above,	\$_____	\$_____	\$_____	\$_____
OPERATING EXPENSES.				
MAINTENANCE OF WAY AND STRUCTURES.				
Repairs of Track,				
Steel Rails laid	Tons, Cost, \$_____	_____	_____	_____
Iron Rails laid	Tons, Cost, \$_____	_____	_____	_____
Repairs of Roadbed,		_____	_____	_____
Repairs of Bridges (including Culverts and Cattle Guards),		_____	_____	_____
Repairs of Stations, Shops, Docks, etc.,		_____	_____	_____
Repairs of Fences.		_____	_____	_____
Other Expenses for Maintenance of Way and Structures,		_____	_____	_____
Total,		_____	_____	_____
MAINTENANCE OF EQUIPMENT.				
Repairs of Locomotives,		_____	_____	_____
Repairs of Cars,		_____	_____	_____
Repairs of Machinery and Tools,		_____	_____	_____
Other Expenses for Maintenance of Equipment,		_____	_____	_____
Total,		_____	_____	_____
CONDUCTING TRANSPORTATION.				
Wages of Conductors and Men,		_____	_____	_____
Wages of Engineers and Firemen,		_____	_____	_____
Fuel for Locomotives,		_____	_____	_____
Oil and Waste,		_____	_____	_____
Water Supply,		_____	_____	_____
Other Train Supplies or Expenses,		_____	_____	_____
Wages of Station Agents and Clerks,		_____	_____	_____
Wages for Labor at Stations,		_____	_____	_____
Station Supplies,		_____	_____	_____
Wages of Watchmen, Flagmen, and Switchmen,		_____	_____	_____
Other Expenses for Conducting Transportation,		_____	_____	_____
Total,		_____	_____	_____
GENERAL EXPENSES.				
Salaries of General Officers and Clerks,		_____	_____	_____
General Office Expenses and Supplies,		_____	_____	_____
Stationery and Printing,		_____	_____	_____
Outside Agencies and Advertising,		_____	_____	_____
Legal Expenses,		_____	_____	_____
Loss and Damage of Freight and Baggage,		_____	_____	_____
Damage to Cattle and Property,		_____	_____	_____
Injuries to Persons,		_____	_____	_____
Telegraph Maintenance and Operation,		_____	_____	_____
Mileage of Cars of other Companies (debit balance),		_____	_____	_____
Other General Expenses,		_____	_____	_____
Total,		_____	_____	_____
Grand Total Operating Expenses,		\$_____	\$_____	\$_____
Operating Cost,       % of Earnings (excluding taxes).				
Operating Cost,       % of Earnings (including taxes on all property actually used in operation of road, and on Earnings and Capital Stock).				
Per mile of road operated: Gross Earnings, \$	Expenses, \$	Net Earnings, \$		

\* The proportion of expenses to be charged to passenger and freight, where not actual, to be made on basis of passenger and freight train mileage; in case of mixed trains the division is to be made equitably.

TABLE E. — GENERAL BALANCE SHEET, JUNE 30, 1890.

ASSETS.		Amount.	LIABILITIES.		Amount.
Cost of Road (as per Table B),	_____		Capital Stock (as per Table A),	_____	
Cost of Equipment (as per Table B),	_____		Funded Debt (as per Table A),	_____	
Other Permanent Investments, as follows, viz.: —			Current Liabilities as follows, viz.: —		
Stock of other Companies, \$	_____		Interest on Funded Debt due and ac-		
Bonds of other Companies,	_____		rued,	_____	
Current Assets as follows, viz.: —			Dividends Unpaid,	_____	
Cash on hand,	\$ _____		Audited Vouchers and Pay Rolls,	_____	
Bills Receivable,	_____		Open Accounts,	_____	
Due by Agents,	_____		Loans and Bills Payable,	_____	
Open Accounts,	_____		Sundries,	_____	
Materials and Supplies,	_____				
Sinking Fund,	_____				
Sundries,	_____				
Profit and Loss (Deficiency), as per Table C,	_____		Profit and Loss (Surplus), as per Table C,	_____	

Above table is to be a condensed statement from the general ledger, and must balance, and show the financial condition of the company on June 30. Any large items which would come under the head of "Sundries" should not be included in "Sundries," but stated specifically.

TABLE F. — TRAFFIC AND MILEAGE STATISTICS.

ITEM.	.....WARD BOUND.			.....WARD BOUND.			IN BOTH DIRECTIONS.		
	Through.	Local.	Total.	Through.	Local.	Total.	Through.	Local.	Total.
Number of Passengers carried,	—	—	—	—	—	—	—	—	—
Number of Passengers carried one mile,	—	—	—	—	—	—	—	—	—
Number of Tons of Freight carried,	—	—	—	—	—	—	—	—	—
No. of Tons of Freight carried one mile,	—	—	—	—	—	—	—	—	—
Passenger Train Mileage,	—	—	—	—	—	—	—	—	—
Freight Train Mileage,	—	—	—	—	—	—	—	—	—
All other Train Mileage,	—	—	—	—	—	—	—	—	—
Total Train Mileage,	—	—	—	—	—	—	—	—	—

ITEM.	Earnings.	Expenses.	Profit.
Passenger Earnings and Expenses (including Mail, Express, and Miscellaneous Earnings as per Table D),	_____	_____	_____
Average per Passenger carried,	_____	_____	_____
Average per Passenger per mile,	_____	_____	_____
Average per Passenger Train per mile,	_____	_____	_____
Freight Earnings and Expenses (including Miscellaneous Earnings as per Table D),	_____	_____	_____
Average per Ton of Freight carried,	_____	_____	_____
Average per Ton of Freight per mile,	_____	_____	_____
Average per Freight Train per mile,	_____	_____	_____
Average number of Cars (all kinds) in Passenger Trains,			
Average number of Cars in Freight Trains,			

ITEM.	Through.	Local.	Through
Computed on Earnings from carrying Passengers and Freight only.	Cents.	Cents.	and Local Cents.
Average rate received per mile for carrying Passengers, first-class,	_____	_____	_____
Average rate received per mile for carrying passengers, second-class,	_____	_____	_____
Average rate received per mile for carrying Passengers, all classes,	_____	_____	_____
*Average rate received per mile per Ton for carrying Freight, all classes,	_____	_____	_____

	Miles per Hour.
Average speed of Ordinary Passenger Trains, including stops,	_____
Average speed of Express Passenger Trains, including stops,	_____
Average speed of Ordinary Freight Trains, including stops,	_____
Average speed of Fast Freight Trains, including stops,	_____
†Average number of Passengers per train,	_____
†Average number of Tons Freight per train,	_____
‡Average number of Miles each Passenger carried,	_____
‡Average number of Miles each Ton Freight carried,	_____

\* Compute 2000 lbs. tons to the ton.

† Divide passengers and tons carried one mile by passenger and freight train mileage respectively.

‡ Divide passengers and tons carried one mile by total passengers and tons carried respectively. All fractions to be stated in decimals.



TABLE G. — DESCRIPTION OF ROAD AND EQUIPMENT.

TRACK.	MILES.					
	Owned.		Leased.		Total.	
	Length in N.Y. State.	Entire Length.	Length in N.Y. State.	Entire Length.	Length in N.Y. State.	Entire Length.
*Main Line authorized from — to —	_____	_____	_____	_____	_____	_____
*Total of Branches or other Roads authorized,	_____	_____	_____	_____	_____	_____
†Main Line laid, first or single track,	_____	_____	_____	_____	_____	_____
†Branches, or other Roads, first or single track,	_____	_____	_____	_____	_____	_____
Total Single Track,	_____	_____	_____	_____	_____	_____
‡Second Track on Main Line,	_____	_____	_____	_____	_____	_____
‡Second Track on Branches or other Roads,	_____	_____	_____	_____	_____	_____
Total Second Track,	_____	_____	_____	_____	_____	_____
‡Third Track on Main Line,	_____	_____	_____	_____	_____	_____
‡Third Track on Branches or other Roads,	_____	_____	_____	_____	_____	_____
‡Fourth Track on Main Line,	_____	_____	_____	_____	_____	_____
‡Fourth Track on Branches or other Roads,	_____	_____	_____	_____	_____	_____
Total Third and Fourth Tracks,	_____	_____	_____	_____	_____	_____
‡Sidings and Turnouts on Main Line,	_____	_____	_____	_____	_____	_____
‡Sidings and Turnouts on Branches or other Roads,	_____	_____	_____	_____	_____	_____
Total Sidings and Turnouts,	_____	_____	_____	_____	_____	_____
Grand Total of Tracks, Sidings, and Turnouts,	_____	_____	_____	_____	_____	_____
Laid with Steel Rail, Main Line,	_____	_____	_____	_____	_____	_____
Laid with Steel Rail, Branches or other Roads,	_____	_____	_____	_____	_____	_____
Laid with Iron Rail, Main Line,	_____	_____	_____	_____	_____	_____
Laid with Iron Rail, Branches or other Roads,	_____	_____	_____	_____	_____	_____

Average life of Rails: Steel,      years; Iron,      years. Average life of Ties,      years.

Weight of Rails per yard: Steel, maximum,      lb., minimum,      lb.; Iron, maximum,      lb., minimum,      lb.

Gauge of Track,      feet      inches. Ballasted with

\* Length of authorized Line, whether built or not.      † Length of road built, showing one track.

‡ Length of additional tracks under the headings as stated. All fractions to be stated in decimals.

## DETAILS OF BRANCHES OR OTHER ROADS.

Name of Branch of Road.	From	To	Length in N.Y. State.	Entire Length.	Owned or Leased.	Miles of Double Track.	Miles Laid with Steel Rail.	Miles Laid with Iron Rail.
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____

BRIDGES.	In New York State.		Entire Line.	
	Number.	Aggregate Length. Feet.	Number.	Aggregate Length. Feet.
Iron Bridges,	_____	_____	_____	_____
Wooden Bridges,	_____	_____	_____	_____
Wooden Trestles	_____	_____	_____	_____
Total,	_____	_____	_____	_____

EQUIPMENT.	No.		Total Number.	Av. Cost of Each.	Max Wt. of Each. Lbs.	Av. Life of Each. Years.	Number Equipped.	Number Equipped. †
	Owned.	Leased.						
Locomotives, 8 Drivers, ‡	_____	_____	_____	_____	_____	_____	_____	_____
Locomotives, 6 Drivers,	_____	_____	_____	_____	_____	_____	_____	_____
Locomotives, 4 Drivers,	_____	_____	_____	_____	_____	_____	_____	_____
Total,	_____	_____	_____	_____	_____	_____	_____	_____
First Class Passenger Cars,	_____	_____	_____	_____	_____	_____	_____	_____
Second Class Passenger Cars,	_____	_____	_____	_____	_____	_____	_____	_____
Baggage, Mail, and Exp. Cars,	_____	_____	_____	_____	_____	_____	_____	_____
Total,	_____	_____	_____	_____	_____	_____	_____	_____
Box Freight Cars,	_____	_____	_____	_____	_____	_____	_____	_____
Stock Freight Cars,	_____	_____	_____	_____	_____	_____	_____	_____
Coal Freight Cars,	_____	_____	_____	_____	_____	_____	_____	_____
Flat Freight Cars,	_____	_____	_____	_____	_____	_____	_____	_____

\* With Patent Brake.

† With Patent Coupler.

‡ In giving weight, include Tender, Fuel, and Water.

Caboose, 4-wheel Cars	—	—	—	—	—	—	—
Caboose, 8-wheel Cars,	—	—	—	—	—	—	—
Service Cars,	—	—	—	—	—	—	—
Total,	—	—	—	—	—	—	—

What kind of Train Brake and Car Coupler are in use on Passenger and Freight Cars on your road ?  
What kind of Switch do you use, and to what extent ?

TABLE II. — MISCELLANEOUS STATISTICS.

ITEM.		In N.Y. State.	Entire Line.
Telegraph owned and operated by Company,	miles,	—	—
Stations, Freight	number,	—	—
Stations, Passenger,	number,	—	—
Stations, Fuel and Water,	number,	—	—
Engine Houses,	number,	—	—
Machine and Car Shops,	number,	—	—
Elevators or Grain Houses,	number,	—	—
Aggregate Capacity of Elevators or Grain Houses,	bushels,	—	—
Cattle Yards,	number,	—	—
Aggregate area of Cattle Yards,	acres,	—	—
Road constructed and opened for business, if any, during the year,	miles,	—	—
Cost of Real Estate now held by Company, exclusive of that used in operation,			
Total assessed value of Real Estate and Personal Property of Company,			
Length of Steel Rails laid during year in repairs,	miles,	—	—
Length of Iron Rails laid during year in repairs,	miles,	—	—
Railroads crossing your Road at Grade,	number,	—	—
Railroads crossing your Road over or under your Grade,	number,	—	—
Highway Crossings at Grade without protection,	number,	—	—
Highway Crossings at Grade protected by Gates or Flagmen,	number,	—	—
Highway Crossings over or under your Grade,	number,	—	—
Overhead obstructions less than twenty feet above track,	number,	—	—
By what means are your Passenger Cars heated ?			
By what means are your Passenger Cars lighted ?			
By what means are your Passenger Cars ventilated ?			
What Express Companies run over your Line, and on what terms and what conditions as to rates, etc.?			
Are Sleeping, Parlor, or Hotel Cars run over your Line, and, if so, by whom are they owned, on what terms are they run, and what average additional charge per mile is made in addition to regular passenger rates ?			

What is the total amount paid by your Company to Parlor or Sleeping Car Companies, to what Companies, and the amount paid to each during the year?

What Freight or Transportation Companies run over your Line, and on what terms? on what conditions as to rates, use of track, machinery, repairs of Cars, etc.? Do they use the Cars of your Company, or those furnished by themselves? and are their Cars or their Freight given any preference in speed or order of transportation, and if so, in what particular?

What is your contract with the United States Government for the transportation of mails?

DESCRIPTION OF FREIGHT MOVED.

ITEM.	Tonnage.	Per Cent.
Flour,	—	—
Grain,	—	—
Meats and Provisions,	—	—
Live Stock,	—	—
Lumber,	—	—
Pig and Bar Iron and Steel,	—	—
Iron or other Ores,	—	—
Coal and Coke,	—	—
Petroleum and other Oils,	—	—
Shipment of manufactured goods received by Railroad,	}	—
Companies within this State from manufactories within this State,		
All other Manufactures,	—	—
All other Merchandise,	—	—
All other Agricultural Products,	—	—
All other articles not included above,	—	—
Total,	—	100

## NUMBER OF ACCIDENTS.

	Injured.	Killed.	Total.
Passengers,	_____	_____	_____
Employees,	_____	_____	_____
Others,	_____	_____	_____
Total,	_____	_____	_____

## EMPLOYEES.

Character of Service.	Average Number employed.	Average Number of Hours on Duty per Day.	Average Monthly Wages.
Machinists,	_____	_____	_____
Carpenters,	_____	_____	_____
Conductors, Passenger,	_____	_____	_____
Conductors, Freight,	_____	_____	_____
Engineers, Passenger,	_____	_____	_____
Engineers, Freight,	_____	_____	_____
Firemen,	_____	_____	_____
Wipers,	_____	_____	_____
Baggagemen,	_____	_____	_____
Brakesmen, Passenger,	_____	_____	_____
Brakesmen, Freight,	_____	_____	_____
Telegraph Operators,	_____	_____	_____
Road Masters,	_____	_____	_____
Section Foremen,	_____	_____	_____
Sectionmen,	_____	_____	_____
Laborers,	_____	_____	_____
Flagmen,	_____	_____	_____
Switchmen and Watchmen,	_____	_____	_____

Average number of persons employed (including officials) during year.

Aggregate amount of Salaries and Wages paid them during year, \$

## OFFICERS OF THE COMPANY.

Name.	Title.	Official Address.
_____	_____	_____
_____	_____	_____
_____	_____	_____

## DIRECTORS OF THE COMPANY.

Name.	Residence.
_____	_____
_____	_____
_____	_____

Title of Company,  
General Offices at,  
Date of close of fiscal year,  
Date of Stockholders annual meeting,  
For information concerning this report, address

\_\_\_\_\_  
\*STATE OF \_\_\_\_\_, }  
COUNTY OF \_\_\_\_\_ } ss:

\_\_\_\_\_, President, and \_\_\_\_\_ General Manager of the \_\_\_\_\_ Rail— Company, being duly sworn, depose and say that the foregoing statements have been compiled from the books and records of this Company, and, after careful examination of the same, declare them to be a true, full, and correct exhibit of the transactions of said Company during the year ending the thirtieth day of June, A.D. 1890, as well as of its financial condition and affairs on the said date, to the best of their knowledge and belief.

Subscribed and sworn to before me }  
this \_\_\_\_\_ day of \_\_\_\_\_ 189 . }

\*To be verified by the oaths of the President or Treasurer, and the General Manager or Acting Superintendent of operations.

OHIO. (*See Ohio Stats.*, 251).

## AS TO STOCK AND DEBT.

1. The amount of capital stock subscribed ;
2. The amount of capital stock paid in ;
3. The amount of funded debt ;
4. The amount of floating debt ;
- Total amount of paid in stock and debt :

## COST OF ROAD AND EQUIPMENT.

5. Cost of right of way ;
6. Cost of construction ;
7. Amount of all other items embraced in cost of road ;
8. Cost of equipment ;
- Total cost of road and equipment :

## CHARACTERISTICS OF THE ROAD, ETC.

9. Length of main line, single track, laid with rail ;
10. Length of branches, single track, laid with rail ;
11. Length of double track, main line and branches ;
12. Aggregate length of sidings and other tracks, not enumerated above ;  
Total length of rail computed as single track :
13. The maximum grade, with its length in main road, and also in branches ;
14. The shortest radius of curvature, with length of curve in main road, and also in branches ;
15. Total degrees of curvature in main road, and also in branches ;
16. Total length of straight line in main road, and also in branches ;
17. Number of wood bridges, and aggregate length ;
18. Number of iron bridges, and aggregate length ;
19. Number of stone bridges, and aggregate length ;
20. The greatest age of wood bridges ;
21. Number of wood trestles, and aggregate length ;
22. The greatest age of wood trestles.
23. Number and kind of tunnels, and aggregate length ;
24. Length of fence required to enclose road, both sides, and reasons why not completed ;
25. Number of engines ;
26. Number of express and baggage cars ;
27. Number of passenger cars ;
28. Number of freight cars ;
29. Number of other cars ;
30. The highest rate of speed allowed by express passenger trains ;
31. The highest rate of speed allowed by mail and accommodation trains ;
32. The highest rate of speed allowed by freight trains ;
33. The rate of fare for passengers charged for the respective classes per mile ;
34. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local.

## DOINGS OF THE YEAR.

35. Length of new rail laid ;
36. Length of re-rolled rail laid ;
37. Number and kind of bridges built, and length ;

38. Number of miles run by passenger trains ;
39. Number of miles run by freight trains ;
40. Number and kind of farm animals killed, and amount of damages paid therefor ;
41. Number of passengers (all classes) carried ;
42. Number of passengers carried one mile ;
43. Number of tons of local freight carried ;
44. Number of tons of through freight carried ;
45. Total movement of freight, or number of tons carried one mile :

EARNINGS FOR THE YEAR.

46. From transportation of passengers ;
47. From transportation of freight ;
48. From mail and express service ;
49. From all other sources ;
- Total earnings for the year :

EXPENDITURES FOR THE YEAR.

50. For construction and new equipment ;
51. For maintenance of way and structures ;
52. For maintaining and operating motive power and cars ;
53. For transportation expenses, including those of stations and trains ;
54. For interest on bonds and other indebtedness ;
55. For dividends, stating rate per cent ;
56. All other expenditures ;
- Total during year :
57. All casualties ;
- Such other information as may be desired : O. 251.

SOUTH CAROLINA.

Annual Report of the ——— Railroad Company for the Year ending June 30, 18

OFFICERS AND OFFICES OF THE COMPANY.

<u>Officers.</u>	<u>Names.</u>	<u>Address.</u>	
Proper Address of the Company ———.			
Names of Directors.	Residence.	Names of Directors.	Residence.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

CAPITAL STOCK.

Amount authorized,	_____	Amount held in S. Carolina (Preferred),	_____
Amount subscribed,	_____	Par value of Shares,	_____
(Common),	_____	Number of Stockholders residing in South	_____
Amount paid in (Preferred),	_____	Carolina,	_____
(Common),	_____	Whole number of Stockholders,	_____

ASSETS.

Cost of construction, June 30, 18 ,	_____
Cost of construction since June 30, 18 ,	_____
Cost of equipment, June 30, 18 ,	_____

Cost of equipment since June 30, 18	
Total cost of road and equipments,	
Cost of road per mile,	
Cost of equipment per mile,	
Cost of equipment and road per mile,	
Other investments,	
Cash,	
Other assets,	
Total assets,	

LIABILITIES.

Capital Stock paid in,	
Capital Stock paid in per mile,	

FUNDED DEBT (guaranteed by State.)

Name of Bonds.	Where and when payable.	Date of Issue.	Rate of Interest.	When Interest payable.	Amount.
				Total,	

FUNDED DEBT (not guaranteed by State).

Name of Bonds.	Where and when payable.	Date of Issue.	Rate of Interest.	When Interest payable.	Amount.
				Total,	

Total amount of Funded Debt,	
Floating Debt,	
Total Debt,	
Bonds guaranteed by this Company, or a lien on its road,	
Overdue interest on same,	
Profit and Loss,	
Other Liabilities,	
Total Liabilities,	
Total Debt per mile,	
Stock and Debt per mile,	

PROFIT AND LOSS.

Dr.	\$	Cr.	\$
-----	----	-----	----

EARNINGS AND EXPENSES.

EARNINGS.

Months.	Passengers. Local, Through.	Mails.	Other Sources, Passenger Department.	Total.	Through.	Freight. Local.	Total.	Total per Month.
18								
July,								
August,								
September,								
October,								
November,								
December,								
January,								
February,								
March,								
April,								
May,								
June,								
Totals,								
Total earnings per mile of road,				Earnings, passenger departm't, per train mile				
Total earnings per train mile,				Earnings, freight departm't, per mile of road				
Earnings, passenger department, per mile of road,				Earnings, freight department, per train mile				

## EXPENSES.

Months.	Maintenance of Way and Buildings.	Maintenance of Motive Power and Cars.	General Expenses. Conducting Transportation.	Taxes.	Other General Expenses.	Total General Expenses.	Totals.
18 .							
July,	_____	_____	_____	_____	_____	_____	_____
August,	_____	_____	_____	_____	_____	_____	_____
September,	_____	_____	_____	_____	_____	_____	_____
October,	_____	_____	_____	_____	_____	_____	_____
November,	_____	_____	_____	_____	_____	_____	_____
December,	_____	_____	_____	_____	_____	_____	_____
January,	_____	_____	_____	_____	_____	_____	_____
February,	_____	_____	_____	_____	_____	_____	_____
March,	_____	_____	_____	_____	_____	_____	_____
April,	_____	_____	_____	_____	_____	_____	_____
May,	_____	_____	_____	_____	_____	_____	_____
June,	_____	_____	_____	_____	_____	_____	_____
Totals,	_____	_____	_____	_____	_____	_____	_____
						Total per mile of road,	_____
						Total per train mile,	_____
Total earnings,			_____	Balance,			_____
Total expenses,			_____	Dividends,			_____
Net earnings,			_____	Date of last dividend declared,			_____
Other income,			_____	Surplus,			_____
Total net income,			_____	Surplus at commencement of year,			_____
Interest paid during year,			_____	Total surplus,			_____
Interest falling due during year, but not paid,			_____	Total income,			_____
Rental paid during year,			_____	Total income per mile of road,			_____
Rental falling due, but not paid,			_____	Total income per train mile,			_____
Other payments from net income,			_____	Net earnings per mile of road,			_____
				Net earnings per train mile,			_____

## DESCRIPTION OF ROAD.

When chartered.

If your road has been consolidated with any other or others, state when the branches were chartered, and when the consolidation occurred.

When present charter expires.

When road opened for public use.

Year.	From	To	Miles.
_____	_____	_____	_____
_____	_____	_____	_____
			Total, _____

LENGTH OF ROAD (*Miles*).

	Main Line.	IN OPERATION.		Total.	Main Line.	CONSTRUCTED.		Total.	Graded.
		Branches.	Siding.			Branches.	Siding.		
Total,	_____	_____	_____	_____	_____	_____	_____	_____	_____
In South Carolina,	_____	_____	_____	_____	_____	_____	_____	_____	_____

ROLLING STOCK (*Number*).

Locomotives.	Passenger Cars.	Freight Cars.	Express and Baggage Cars.	Other Cars.
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

## EMPLOYEES.

Number.	Aggregate Annual Salary.	Average Annual Salary.
_____	_____	_____
_____	_____	_____

Kind of train brake in use on your road.

Number of locomotives equipped with train brakes.

Number of cars equipped with train brakes.

Number of miles of steel rail.  
Number of miles of steel rail in South Carolina.  
Number of miles of steel rail laid since June 30, 18 .  
Number of miles of steel rail laid in South Carolina since June 30, 18 .  
Number of bridges: wooden, ; iron, ; combination, .  
Number of bridges built since June 30, 18 : iron, ; wooden, ; combination, .  
Aggregate length of bridges: iron, ; wooden, ; combination, .  
Number of trestles.  
Aggregate length of trestles.  
What signal is given when crossing highway.  
Number of crossings of highway: at grade, ; under, ; over, .  
Number of crossings without sign.  
Gauge.  
Carrying capacity of freight cars: pounds; cubic feet.

MILEAGE, TRAFFIC, ETC.

MILEAGE.

Miles run by passenger trains,	_____
Miles run by freight trains,	_____
Miles run by other trains,	_____
Total train mileage,	_____

TRANSPORTATION.

Passengers, number carried: local,	_____
“ “ “ through,	_____
Total,	_____

Local passenger mileage,	_____
Through passenger mileage,	_____
Total passenger mileage (or number carried one mile),	_____

Average amount received for each,	_____
Average amount per mile for each,	_____
Freight, tons carried: local,	_____
“ “ “ through,	_____
Total,	_____

Local freight mileage (or number of tons local freight carried one mile),	_____
Through freight mileage (or number of tons through freight carried one mile),	_____
Total freight mileage (or tons carried one mile),	_____

Average amount received for each ton local freight,	_____
Average amount received for each ton through freight,	_____
Average amount received for each ton through and local freight,	_____

Average rate per ton per mile local freight,	_____
Average rate per ton per mile through freight,	_____
Average rate per ton per mile all freight,	_____

Charge for loading and unloading freight trains,	_____
Speed of passenger trains per hour,	_____
Speed of freight trains per hour,	_____
Failure of passenger trains to meet schedule time at junctions and termini,	_____
Average weight of passenger trains,	_____
Average number of cars in passenger trains,	_____
Average weight of freight trains,	_____
Average number of cars in freight trains,	_____

TONNAGE OF FREIGHT CARRIED.

Articles.	Tons.	Per Cent.
Grain,	_____	_____
Flour,	_____	_____
Bacon,	_____	_____
Other Provisions,	_____	_____
Lumber,	_____	_____
Cotton in Bales, — Number of Bales,	_____	_____
Live Stock,	_____	_____
Fertilizers,	_____	_____





**Art. 857. Railway Commissioners.**

§ 8570. **Institution.** Railroad commissioners have been provided for in a number of states: N.H. 155,1; Mass. 112,9; Me. 51,113; 1889,313; Vt. 3481; 1886,23; R.I. 158,1; 1889,758; Ct. 3413; N.Y. 1890,565,150; O. 245; Ill. 114,167; Mich. 3285; Wis. 128; Io. 1888,29; Minn. 498; Kan. 23,170; Neb. 1887,60,11; Va. 1298; Ky. 90a,VI,5; Mo. 2678; Ark. 5647; 1887,92,19; Tex. 1891,51; Cal. 1880,45,1; Ore. 4002; Col. 1885, p. 307,1; S.C. 1451; 1888, 27,6; Ga. 719(a); Ala. 1120; Miss. 1884,23; 1886,21; Ariz. 1891,89; U.S. 1887,104,11.

The board of railroad commissioners consists of three persons (five, U.S.), appointed by the governor (by the executive council, Kan.; the president, U.S.), with the consent of the council or senate: N.H., Mass., Me., Vt., Ct., N.Y., Ill., Minn., Kan., Ky., Tenn., Tex., Ga., Ala. 1877,8, U.S. They hold office for three years (one being appointed each year, or two years, N.H., Mass., Ct., O., Io., Kan., Tenn., Miss., U.S.): N.H. 155,1,2; Mass. 112,9; Me. 51,115; Vt. 1886,23; Io.; Minn.; Kan. For two years: Ill., Ky., Tenn. Four years: Ct. 3413; Ariz. Five years: N.Y. Six years: Mo., U.S., Ala., Ga.

There is one commissioner elected by the legislature in joint assembly: Va. 1298. So, three: Ore. 1889, p. 22. Appointed by the governor: R.I., O., Mich., Col. With the consent of the senate: Mich., Col. He holds office for three years: R.I. Two: O., Mich., Wis., Va., Ore., Col. He is (They are) elected by the people: Wis., Mo. Three, elected by the legislature, holding office six years, one retiring each two years: S.C. 1888,27,6. Three, one for each supreme court district, elected by the legislature, holding office two years: Miss.

They are elected by the people at the annual election: Io. 1888,29; Mo.; Cal.

They may be removed by impeachment; Ala. 1124; by the governor or other appointing power: N.H.; Mass.; Ill.; Mich. 3287; Kan.; Va.; Col.; S.C.; U.S.

One of them shall be learned in the law, and be appointed chairman; one shall be a civil engineer experienced in the construction, and the third one experienced in the management and operation of railroads: Me.

One shall be a lawyer of good standing, and at least ten years' practice, and one a civil engineer of the same requirements, and the third a "good practical business man:" Ct. 3414.

One shall be experienced in railroad business, and one other in the law: Ga.

Said commissioners shall be qualified electors of the state: Mich. 3286; Io.; Kan.; Tex., Ore., Col.; and a citizen of the United States: Col.; and shall have resided at least two years in the state: Col.; shall be twenty-five years of age or more: Tex.

Qualified like other state officers: Miss. 1884,23,4.

The commissioners shall be selected, one from the eastern, one from the central, and one from the western districts of the state: Ky. 92,3,3; Tenn. 2311. Two from the northern, two from the southern: Ariz.

The governor, secretary of state, and auditor constitute the board: Ark.

So the attorney-general, secretary of state, auditor, state treasurer, and commissioner of public lands: Neb.

There shall be three railroad commissioners. The commissioners appointed in the years 1885 and 1886 shall hold office until the first day of July, 1889, and the commissioner appointed during the regular session of the general assembly in the year 1887 shall hold office until the first day of July, 1891. The governor shall, within sixty days from the organization of the general assembly at its regular session in 1889, and within sixty days from the organization of said assembly at its regular session quadrennially thereafter, nominate, and, with the advice and consent of the

senate, shall appoint two railroad commissioners, and shall, within sixty days from the organization of the general assembly at its regular session in 1891, and within sixty days from the organization of said assembly at its regular session quadrennially thereafter, nominate, and, with the advice and consent of the senate, shall appoint one railroad commissioner. The commissioners so appointed shall hold their respective offices for four years from the first day of July next succeeding their respective appointments. The senate shall act on all nominations of the governor within ten days after they are made. If the governor shall fail to nominate, within the sixty days herein prescribed, a person or persons for railroad commissioner or commissioners, who shall be confirmed by the senate, the general assembly shall fill the vacancy or vacancies which will arise during the year : Ct.

No stockholder (or bondholder, N.Y., O., Ill., Mich., Wis., Io., Minn., Kan., Va., Ky., Mo., Tex., Ore., Col., S.C., Ga., U.S. ; or employee, N.H., O., Ill., Mich., Wis., Io., Minn., Kan., Va., Ky., Mo., Col., S.C., Ga., Ala., Miss., U.S.), officer, or other person interested in any railroad, shall be eligible as a railroad commissioner : N.H. 155,1 ; Mass. 112,9 ; Vt. ; Ct. 3415 ; N.Y. 1890,565,154 ; O. 245 ; Ill. 114, 168 ; Mich. 3286 ; Wis. 1792a ; Io. 1888,29 ; Minn. ; Kan. ; Va. 1298 ; Ky. 90a, VI,6 ; Mo. ; Tex. ib. 1 ; Ore. 4004 ; Col. ib. 2 ; S.C. 1451 ; Ga. ; Ala. 1123 ; Miss. ib. 5 ; U.S. ; and if any person elected to the office shall become an officer, stockholder, or interested in any railroad, he shall immediately cease to hold the office : N.H., Mass., Ill., Mich., Io., Ky., Mo., Tex., Ore., S.C. ; unless he shall within a reasonable time divest himself of such interest : Tex.

Not more than two of them shall belong to the same political party : N.H., Minn., Kan., Ore. Not more than three : U.S.

No one who is in any manner pecuniarily interested in any firm or corporation having business relations with any railroad corporation shall hold either of said offices, nor shall either of said commissioners be engaged in any other business avocations : Minn.

No such commissioner or clerk shall personally, or through a partner or agent, render any professional service or make or perform any business contract with or for a railroad corporation chartered under the laws of this commonwealth, excepting contracts made with them as common carriers ; nor shall he directly or indirectly receive a commission, bonus, discount, present, or reward from any such corporation : N.H. 155,8 ; Mass. 112,9 ; Vt. ; Ala. 1124,1127 ; Miss. ib. 5. No such commissioner shall hold any other office, state or national, nor engage in any business inconsistent with his duties : Tex. They shall engage in no other business : U.S.

No commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest : N.H. 155,9 ; Ore. 4017 ; Io. ; Minn. ; Neb. ; U.S. ib. 17.

Said railroad commissioners shall not, directly or indirectly, solicit or request from, or recommend to, any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any persons or person to any place or position ; nor shall any railroad corporation, its attorney or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerk or employee of said commissioners whatever ; neither shall said commissioners, nor their secretary, clerks, agents, employees, or experts accept, receive, or request any pass from any railroad in this state for themselves or for any other person, or any present, gift, or gratuity of any kind from any railroad corporation ; and the request or acceptance by them, or either of them, of any such place or position, pass, presents, gifts, or other gratuity shall work a forfeiture of the office of the said commissioner or commissioners, secretary, clerks or clerk, agent or agents, employee or employees, expert or experts, who shall be guilty thereof : N.Y. 1890,565,168.

The persons so appointed shall make, subscribe, and file in the office of the secretary of state, an oath of office : N.Y. 1890,565,154 ; O. ; Ill. 114,169 ; Mich.

3288; Wis. 1793; Io.; Minn.; Va.; Ky.; Mo. 2687; Tex.; Ore. 4006; Col. ib. 4; S.C.; Ga.; Ala. 1121; Miss.; Ariz. ib. 4. An "affidavit:" Ky. 90a,7.

"They shall be sworn:" Mass., Vt., Io., Kan.

They shall take an oath against duelling: S.C.

And shall enter into bonds with the people of the state in the sum of ten or twenty thousand dollars, with sureties to be approved by the governor, conditioned for the faithful performance of his duties: O. 246; Ill.; Mich. 3288; Wis.; Io.; Minn.; Kan.; Mo.; Ore.; Col.; Miss.

Vacancies may be filled for the residue of the term by appointment of the governor (the president, U.S.): N.H.; Mass.; Vt.; Ct. 3415; N.Y.; Mich. 3282; Io.; Minn.; Ky.; Mo.; Tex.; Ore.; Col.; S.C.; Ga.; Ala. 1122; Miss. ib. 5; U.S.; with the approval of the senate: Ala.; or legislature, if in session: S.C. 1888,27,6; of the council: Kan.

The office expenses and salaries of the board shall be paid monthly from the treasury, and in July in each year the whole amount so paid during the year ending the fourth day of July shall be apportioned by the comptroller among the several railroad companies in proportion to the length of the main track or tracks of their respective railroads in this state, and each company and the trustees, assignees, lessees, or other parties operating any such railroad, shall pay the treasurer their proportion of such amount: Ct. 3418. In other states they are paid according to the proportion of the gross earnings of each railroad in the state: N.H. 155,7; Me. 1869,313,4; Ala. 1128.

Any commissioner may be suspended from office by the governor upon written charges preferred. The governor shall report such suspension, and the reasons therefor, to the senate at the beginning of the next ensuing session, and if a majority of the senate shall approve the action of the governor such commissioner shall be removed from office, and his office become vacant: N.Y. 1890,565,151; Ga.

Which board shall have power by a four-fifths vote to appoint three (3) secretaries to assist in the performance of the duties of said board. Not more than two of the secretaries shall be appointed from the same political party. The secretaries of the board shall take the oath of office prescribed for state officers, and shall enter into bonds, to be approved by the governor, in the sum of ten thousand dollars (\$10,000), conditioned for the faithful performances of their duties. No persons in the employ of any railroad corporation, or holding stock in any railroad corporation, shall be employed as secretary: Neb. 1887,60,12.

To carry out the provisions of this act without undue burden to the state officers who compose the board of transportation, their secretaries are hereby empowered, in all matters of examination or investigation, to perform the duties prescribed for the board themselves: Provided, that all final decisions shall be made by the board themselves: Neb. 1887,60,22.

§ 8571. **General Duties.** (See also §§ 8831, 8832, 8833, etc.) Said board shall "have the powers and be subject to the duties hereafter specified:" Ct. 3417.

They may employ experts and other agents when necessary: N.H. 155,6; Ct.; N.Y. 1890,565,153.

The railroad commissioners shall have the right to pass free of charge, in the performance of their duties, on all railroads in the state, and to take with them any person in their official employment: N.H. 155,5,6; Mass. 112,10; Vt. 1886,26,3; R.I. 1889,358; Ct. 3419; O. 250; Ill. 114,171; Wis. 1797; Io. 1878, 77,10; 1888,28,30; Minn. 502; Kan. 23,191; Va. 1313; Cal. 1880,45,3; Ore. 4024; Col. 1885, p. 314,18; N.D. 1890,122,10; S.C. 1454; Ala. 1129; Miss. 1884,23,5.

It shall be the duty of the railroad commissioners to see that the provisions of this act are enforced: Mo. 2646; Tex. 1891,51,21; U.S. ib. 12.

When the commissioner, upon complaint or otherwise, has reason to believe that any railroad company, or any officer, agent, or employee of any railroad company, has violated, or is violating, any of the laws of the state, he shall examine into the matter: O. 248; Wis. 1794; Ore. 1891, p. 127. See § 8573.

A majority of the commissioners shall constitute a quorum to do business, and the act of two (three, Neb., U.S., Ariz. ib. 2) shall be taken to be the act of the commissioners: Vt. 1886,23,2; N.Y. 1890,565,156; Io. 1888,28,21; Minn.; Neb. 1887,60,17; Mo. 2657; Tex. ib. 2; N.D. 1890,122,18.; U.S. 1887,104,17.

Said board of commissioners shall keep an accurate record of all its official acts: N.Y. 1890,565,152; Ore. 4005,4017; Mich. 3309; Minn.; Kan. 23,190; Neb.; Tex.; Cal. ib. 9; Ala. 1126. Which shall be always open to public inspection: Ala.; U.S. And shall also provide a seal: N.Y.; Io.; Minn.; Kan.; Neb.; Tex.; Cal. ib. 6; Ore.; Col. ib. 20; U.S.

And certified copies of such records are evidence in all courts: Mich.; Ala. 1135.

The commission may make general rules. Any party may appear before it in person or by attorney: Ore. 4017; Io. 1888,28,21; Minn. 498; Neb.; Tex.; Ariz.; U.S.

The attorney-general of the state shall be *ex officio* attorney for the commissioners of railroads, and shall give them such counsel and advice as they may from time to time require; and he shall institute and prosecute any (and) all suits which said commissioners of railroads may deem it proper and expedient to prosecute: N.D. 1890,122,9; Ga. 1890,62.

The determination of every matter by said commission shall be in writing, and proof thereof shall be made by a copy of the same, duly certified to by the clerk of said commission; and whenever any matter has been determined by said commission, in the course of any proceeding before it relating to the regulation or supervision of any railroad in this state, and coming within the jurisdiction of such commission, proof of the fact of such determination, duly certified as aforesaid, shall be received in all the courts of this state, or before any officers thereof, in all civil cases, as *prima facie* evidence that such determination was right and proper; and the record of the proceedings of said commission shall be deemed a public record, and shall, at all reasonable times, be subject to the inspection of the public: Ala. 1136; Miss. 1882, 23,19.

They shall, on notice by the governor, attend the meetings of the state board of assessment: Ala. 1141.

§ 8572. **Examination of Railways.** The board shall have the general supervision of all railways: N.H. 155,11; Mass. 112,14; Vt. ib. 5; N.Y. 1890,565, 157; Ill. 114,177; Mich. 3295; Wis. 1794; Io. 1878,77,3; Minn. 502; Kan. 23,172; Neb. 1887,60,11 & 17; Va. 1298; Ky. 909,VI,12; Ore. 4012; 1891, p. 127; Col. ib. 5; N.D. 1890,122,10; S.C. 1455; Ga. 719(g); Ala. 1129; U.S. ib. 12. They shall examine the same, keep themselves informed as to the condition of railways, and the manner in which they are operated with reference to the security and accommodation of the public, and the compliance of the corporation with its charter and laws: N.H., Mass., Vt., N.Y., Ill., Io., Minn., Kan., Neb., Va., Ore., Col., N.D., S.C., Ala., U.S.

And also of all express companies: Kan. Sleeping-car companies: Kan. And all other common carriers: Kan., Minn. And warehouses: Ill.

The railroad commissioners shall, as often as they may deem it necessary, carefully examine the condition of the several railroads of this state: Mo. 2685; Neb., Ore., N.D.

They shall conform to any United States laws concerning interstate commerce : Vt. ib. 12.

In order to enable said commissioners efficiently to perform their duties under this act, it is hereby made their duty to cause one of their number, at least once in six months, to visit each county in the state in which is or shall be located a railroad station, and personally inquire into the management of such railroad (and warehouse) business : Ill. 114,177. So, once a year : Mich. 3303 ; Minn. 502 ; N.D.

And whether such railroad companies and warehouses, their officers, directors, managers, lessees, agents, and employees comply with the laws of this state now in force, or which shall hereafter be in force concerning them : Ill. 114,136 ; Mich. 3295.

Said commissioners, once at least in each year, shall make personally a full examination into the condition of the proprietors of every railroad and the management of their affairs, and inspect, so far as practicable, all books, accounts, and papers : N.H. 155,11.

The railroad commissioners shall, at least twice in each year, examine the several railroads in this state, shall make a like examination of any railroad within the limits of any town, when thereto requested in writing by the selectmen, and shall see that the same are kept in suitable repair, and that the railroad companies faithfully comply with all provisions of law : Ct. 3422.

Said commissioners shall cause such portion of the laws relating to railroads as they deem proper to be posted as they shall direct ; and may at any time, and on the complaint in writing of five of the stockholders or creditors of any railroad company assigning sufficient reason examine its railroad and all its appurtenances, engines, and cars, and its by-laws and rules, and in such examinations shall pass over the road at a rate not exceeding six miles an hour, and shall stop at each culvert, bridge, and piling, and examine the same, and shall examine the rails and ties in every mile, notifying the company in writing of the time of such examinations ; and shall notify the company to make all repairs required within a time limited ; shall make such rules as to platforms and out-buildings at stations as are for the public interest ; may prescribe the time during which any ticket office shall be open for the sale of tickets, and no company neglecting such order shall receive more than the regular ticket price for fare ; shall make necessary orders for compelling companies to furnish comfortable seats for passengers, and for regulating the manner in which companies shall manage their engines and cars at highway crossings ; shall direct that suitable warning boards be put up at dangerous crossings ; may require companies to maintain a gate across a highway at any crossing, and to provide an agent to open or close the same ; shall, when two roads meet or intersect, at the request of the directors of the company owning either, prescribe rules relative to the exchange of passengers and luggage ; and shall cause printed copies of sections 3443, 3444, 3445, to be kept posted up at all railroad stations : Ct. 3423.

A majority of the board, annually, between the first of April and October, and at any other time on application or whenever they think necessary, shall carefully examine the tracks, rolling stock, bridges, viaducts, and culverts of all railroads ; shall give a certificate thereof to the clerk of the corporation, therein stating the condition of the road and rolling stock : Me. 51,114.

The corporation shall file such certificate in the office of the secretary of state before the first day of each December, and pay the commissioners for the examination, or forfeit one thousand dollars, to be recovered in an action on the case, half to the state and half to the prosecutor ; and if the president and directors of a railroad while guilty of such neglect allow a passenger train to run over it, they are personally liable for any damages occasioned by a defect in said road or rolling stock ; but this shall not relieve the corporation : Me. 51,115.

The railroad commissioner shall, whenever he shall deem it expedient, personally examine into the proceedings of any railroad corporation authorized and established

in this state, and report to the general assembly from time to time whether such facilities and accommodations as are required by this chapter are furnished, and into all the other acts and doings of any such corporation, whereby the rights and privileges of this state or of any of its citizens may be affected: R.I. 158,27; 1889,758.

Shall inspect and examine the condition, equipment, and manner of management of any and of all the railroads doing business in the state with relation to the public safety and convenience: Wis. 1794.

It is the duty of the railroad commissioner to make examination from time to time as to the compliance of railroads or other carriers with the statutes concerning bills of lading: Va. 1212.

§ 8573. **Remedies and Control.** (For Rates, etc., see § 8833.) (A) **Of their own Motion.** The board, whenever in its judgment any railroad has violated a law, or neglects to comply with its charter or the provisions of any law, shall give written notice to it; and, if the violation or neglect is continued (N.H., Mass., Cal.), (1) shall forthwith present the facts to the attorney-general: N.H. 155, 15; Mass. 112,15; N.Y. 1890,565,160; Neb. 1887,60,17. Compare § 8834.

(2) Shall include such proceeding in their annual report (§ 8578): Kan. 23,172; Col. ib. 5; Ariz. ib. 7.

(3) Shall apply to the courts for an injunction, or any remedy: N.H.; Vt. 1886, 23,7; Cal. ib. 4 & 12; Minn. 1891,106,4; N.D. 1890,122,10; S.C. 1456.

(4) They may prosecute the railroad through the district attorney: Mich. 3303-4; U.S. ib. 12.

(5) They may, after notice to the corporation, report the same to the legislature: Kan., Vt.

So also the same process is employed when the commissioners deem any repairs necessary: Kan.; Neb.; S.C. 1457. Or any addition to rolling stock or new stations: Kan., Neb., S.C. Or any change in the freight rates: Kan., S.C. Or passenger rates: S.C. Or in the mode of operating the road or conducting business: Kan., Neb., Col., S.C. So when the road fails properly to provide for the security of the public: Vt. Or unjustly discriminates in its charges: Vt., N.Y., Neb., Ariz. Or usurps any authority not granted by its charter: Vt., N.Y. Or refuses to comply with any recommendation of the board: Vt., N.Y. Or enters into any combination or conspiracy whereby rates or the cost of commodities are unduly increased: Vt.

And whenever it shall come to their knowledge, either upon complaint or otherwise, or they shall have reason to believe, that any such law or laws have been or are being violated, (1) they shall prosecute or cause to be prosecuted all corporations or persons guilty of such violation: Ill. 114,177; Mich. 3303; Minn. 516; Ky. 90a,VI,12; N.D. 1890,122,16.

(2) He shall give notice thereof in writing to such company, or the person operating the same; and if the violation or neglect be continued after such notice, the commissioner shall make report of the facts to the board of public works, and such board shall, if upon inquiry into such facts it deems it proper or necessary, direct the said commissioner to make application by a bill in equity for an injunction: Va. 1300.

Railroad commissioners shall notify railroads of failure in any respect to comply with the law, or to make reports or repairs, additions, or of any change in its rates of freight, or in operating the road, as they think reasonable and expedient for the public accommodation, and report such notice to the legislature: Io. 1878,77.3.

Such railroad commissioners may institute any inquiry, on their own motion, in the same manner and to the same effect as though complaint had been made. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant: Mo. 2646.

The railroad commissioners shall recommend in writing to the several railroad companies, or any of them, from time to time, the adoption of such measures and regulations as such commissioners deem conducive to the public safety and interest; and shall report any neglect to adopt such recommendations to the next general assembly: Ct. 3426; Col. ib. 5; Ala. 1129.

They shall investigate freight rates to and from points out of the state; and if found excessive may request a change and appeal to the U.S. Interstate Commerce Commission: Ga. 1890,62; Tex. 1891,51,12.

**(B) Upon Complaint** of the mayor and aldermen of a city or selectmen of a town within which a part of any railroad lies, the board shall examine the condition and operation thereof; and so upon petition of twenty or more legal voters, if the mayor and aldermen refuse. If, upon examination, the board deem the complaint well founded, it shall so adjudge, and shall inform the corporation in writing: N.H. 155,16; Mass. 112,17.

If there be a failure of proper connection between railways, or proper and reasonable accommodations for transportation of passengers and freight be not furnished, the commissioners shall inquire into the causes, after notice, and make a public report, with recommendations: Vt. ib. 8.

Whenever he shall receive any complaint in writing, made by any person or corporation, of any such neglect or violation of law, and specifying the acts complained of, such commissioner shall investigate the same; and if he shall find such complaint well founded, he may, in his discretion, report the facts to the attorney-general: Wis. 1794.

So, "when he shall have reason to believe that differences have arisen between citizens of the state and any corporation common carrier:" O. 248a.

Upon complaint of the municipal authorities of any city or town (or county, S.C.), (and if twenty-five legal voters petition such municipal authorities to make such complaint, and they refuse, Io., Kan.), the commissioners may hold a hearing upon the subject thereof, and if the complaint appears well founded, they shall so adjudge, inform the railroad corporation within ten days, and report their doing to the governor: Io. 1878,77,15; Kan. 23,185; S.C. 1458.

So, the commissioner, upon application of the board of county commissioners, or twenty-five citizens of any county, may make examination of any rate of freights or fares: Col. ib. 16.

Any person, corporation, body politic, or municipal organization (or any state railroad commission, U.S.) complaining of anything done or omitted to be done by any common carrier contrary to the provisions of this act, may apply to the railway commission by petition stating the facts; whereupon notice is given to the carrier to make answer to the charges within a reasonable time specified. If within such time the carrier make reparation for the injury, it is relieved of liability to the complainant only for the particular violation of law thus complained of. If the carrier do not satisfy the complainant within such time, or there shall appear to be any reasonable ground for investigating, the commissioners shall investigate such complaint in such manner and by such means as they deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant: Io. 1888,28,13; Minn. 504; 1891, 106,2; Neb. 1887,60,13; Ore. 4013; 1891, p. 125; N.D. 1890,122,13; U.S. 1887,104,13.

Any person claiming to be damaged by a common carrier, subject to the provisions of this act, may either make complaint to the railroad commissioners or bring suit for damages, but not both said remedies at the same time: Io. 1888, 28,10; Minn. 503; Neb. 1887,60,10; N.D. 1890,122,11.



The commission make report in writing of such investigation of the findings of fact upon which its conclusions are based, together with its recommendation as to reparation, if any, by the common carrier; and such findings are made *prima facie* evidence in all judicial proceedings as to every fact found. The said reports shall be entered on record, and a copy furnished the complainant and the common carrier. If in any such case it appear on investigation that anything has been done or omitted in violation of the provisions of this act or of any law, or that any injury has been sustained by the complainant or other parties in consequence of any such violation, the commission are required to give a copy of the report to such common carrier, with notice to cease from such violation, or to make reparation for the injury so found, or both, within a reasonable time specified, and if within such time it appear that the carrier has so ceased or made reparation in compliance with the report or to the satisfaction of the party complaining, a statement to that effect is entered of record by the commission and the carrier relieved from further liability: Io. 1888,28,14-15; Minn. 505; Neb. 1887,60,14,15; Ore. 4014, 4015; 1891, p. 126,4-5; N.D. 1890,122,14; U.S. 1887,104,14-15.

If the common carrier refuse or neglect to obey any lawful order of the commission (see also § 8834), the commission or any other person may make complaint to the circuit court, which shall hear and determine, and on such hearing the report of said commission shall be *prima facie* evidence; and if it appear that the lawful order of the commission has been violated, the court may issue injunction or other proper process, mandatory or otherwise, against such carrier, with appeal to the supreme court: N.Y. 1890,565,162; Io. 1888,28,16; Minn. 506; Neb. 1887,60,16; Ore. 4016; 1891, p. 127; N.D. 1890,122,15; U.S. 1887, 104,16.

So, if the railroad demand or receive a greater amount than that approved by the commissioners, which is declared *prima facie* evidence of the fact that its charges are reasonable (and see §§ 8833, 8834): Ore. 1891, p. 124.

It is the duty of the governor, on request of the commissioner, to direct the district attorney or attorney-general to institute any suit against a railroad for the violation of any law of the state concerning railroads except private actions: Col. 1885, p. 312,14.

The circuit and district courts are given power to enforce by proper decrees, injunctions, and orders the rulings, orders, and regulations affecting public right made by the commissioners, such as are authorized to be made by them. The proceedings are by equitable action brought by the attorney-general. If the court find the regulation reasonable and just, they may issue a mandatory and perpetual injunction compelling obedience thereto, and grant other proper relief; and violations of such decree render the company and its agents liable for contempt: Io. 1884,133.

If any common carrier fail to comply with any lawful order of the railroad commissioners, they having summarily petitioned the court, it proceeds as in equity, may issue injunctions, mandatory or otherwise, with right of appeal to the supreme court: Io. 1888,28,16.

In case any common carrier, subject to the provisions of this act, shall do, cause to be done, or permit to be done any act or thing in this act prohibited, or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons, party or parties, injured thereby, for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee: Minn. 503(a); N.D. 1890,122,16.

It shall be the duty of the board of railroad commissioners, upon complaint and application by the mayor and council of any city or the trustee of any township in this state requesting an order of said board to require any railroad company in this state to construct any depots, side tracks, switches, or other facilities at any point on the line of such railroad, for the convenience and safety of the public in the transaction of business with such railroad, and the interchange of business between connecting or parallel railroads at any station, town, or city in this state, to investigate such complaint after giving proper notice to the railroad companies interested; and said commissioners after such examination shall make such orders as they deem necessary and proper: Kan. 23,199.

If complaint shall be made by any railroad company in this state against any other railroad company in this state on account of failure, neglect, or refusal to comply with the provisions of section nine of an act entitled "An act concerning railroads and other common carriers," approved March 6th, 1883, the board of railroad commissioners shall, upon notice to said railroad company, investigate such complaint, and thereupon make such order as in the opinion of said board shall be just and reasonable for the public interest, and may fix in such order a reasonable switching charge: Kan. 23,200.

For every neglect or refusal of any railroad company to comply with any order of the board of railroad commissioners of this state, made in pursuance of the foregoing provisions, the person or corporation so neglecting or refusing shall forfeit to the state the sum of one hundred dollars for each and every day that any such order is neglected or disobeyed after the expiration of thirty days from the date of service of notice: Kan. 23,202.

It shall carefully investigate any complaint made in writing, and under oath, concerning any lack of facilities or accommodations furnished by any railroad corporation doing business in this state, for the comfort, convenience, and accommodation of individuals and the public; or any unjust discrimination against either any person, firm, or corporation, or locality, either in rates, facilities furnished, or otherwise: Neb. 1887, 60,17.

Upon the complaint and application of the mayor and aldermen or council of any city or town, or the judge of the county court of any county, within which any part of such railroad is located, it shall be the duty of the said commissioner to make an examination of the physical condition and operation thereof. Before proceeding to make such examination in accordance with such application, said commissioner shall give to the applicants, and the company or person operating the road, reasonable notice in writing of the time and place of entering upon the same. If upon such examination it shall appear to said commissioner that the complaint alleged by the applicant is well founded, he shall so adjudge, and shall inform the company or person operating such railroad of his adjudication; and if such company or person fail, for sixty days after such notice, to remove the cause of complaint, the commissioner shall make report thereof to the board of public works for such action as he may deem expedient: Va. 1302.

Such commissioners shall hear and determine complaints under the second, third, and fourth sections of this act, under the first section of the act hereby amended, and the civil actions provided for in section four of said act. Such complaints shall be made in writing, and they shall give the company complained of not less than ten days' notice of the time and place of hearing the same. They shall hear the evidence adduced by the parties, and render award as authorized by this act. If the award of the commissioners be not satisfied within ten days after the same is rendered, the chairman shall file a copy of said award in the office of the clerk of the circuit court of the county which, under the Code of Practice, would have jurisdiction of said controversy; and the clerk of said court shall enter the same on the motion docket for trial. If the matter in controversy shall exceed twenty dollars, said judge, or the court, if in regular term, on demand of either party, shall impanel a jury to try the same: Ky. 1890,305,7.

If the court or judge shall be of the opinion, or the jury shall find, that the award of

the said commissioners is just, judgment shall be entered, and execution shall issue thereon as on other judgments; otherwise, the party against whom the award shall have been rendered shall be dismissed. The findings of fact by the commissioners shall accompany the award, and such findings and award shall thereafter, in all judicial proceedings, be *prima facie* evidence as to all matters included therein: Ky. 1890,305,7.

Any person having an interest in the matter may make complaint in writing that any rate is unreasonable or extortionate or unjust, or that any of the provisions of this act have been or are being violated, and the railroad commissioners shall investigate and determine: Mo. 2646.

Their decision shall embrace a summary statement of the facts ascertained, and may order the common carrier to desist immediately from such violation of this act, or award the amount of damages. If the common carrier fail to pay such amount, the commissioners instruct the attorney-general or district attorney to bring suit in the name of the state at the relation and to the use of the party injured, to enforce payment thereof, together with costs, and at such trial the commissioners' award is *prima facie* evidence of facts therein stated; or such person to whom damages are due may institute suit in his own name: Mo. 2648.

When complaint is made as herein and the commissioners are satisfied that, if true, it contains a substantial charge that some provision of this act is being violated, they may proceed informally, by letter or otherwise, to investigate the matter with the common carrier; or make a preliminary investigation of the truth of the charge, and may then fix a formal hearing if necessary: Mo. 2649.

Whenever the commissioners have made a lawful order, upon complaint or otherwise, and the railroad refuses to obey, they may apply in a summary way by petition to the circuit court; and at the hearing in such court a report of the commissioners is *prima facie* evidence of the matters therein stated; and injunctions or other proper proceedings may issue, or the court may decide that such order of the railway commissioners was not a lawful one and substitute a proper order therefor: Mo. 2653.

In case the railroad commissioners shall fail or refuse to perform any act or duty required of them by this act, they shall be liable to proceedings in mandamus: Mo. 2657.

It shall be the duty of the commission to investigate all complaints against railroad companies subject hereto, and to enforce all laws of this state in reference to railroads. But any two connecting railroads may enter into a contract whereby any part or all of the passengers, freight, or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received, and transported by the other; which contract, however, shall be submitted to the railroad commission for examination and approval, and when so approved shall be binding; but if the said contract be not approved by the commission the same shall be void: provided, that any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof, in the county where the freight is delivered, for any damage that may be done to such freight in its transportation: Tex. 1891,51,21(a).

Said commission shall report all such violations, with the facts in their possession, to the attorney-general or other officer charged with the enforcement of the laws, and request them to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all other suits pending therein: Tex. 1891,51,21.

Any person or municipality, or other corporation, complaining of anything done or omitted by any railroad, in violation of law or of this act, may apply to said commission, which shall give notice to the railroad, investigate, and determine such complaint. If such violation was not wilful, it shall call upon said road to satisfy the damage done to the complainant and pay costs; but if wilful, it shall institute proceedings to recover

the penalty for such violation ; but the person injured may sue for any penalty that may be due him, and his right shall not be abridged by this section : Tex. 1891,51,9.

Whenever the board shall render any decision within the purview and pursuant to the authority vested in said board by section 22 of article 12 of the constitution, said board, or the person, copartnership, company, or corporation making the complaint upon which such decision was rendered, is authorized to sue upon such decision in any court of competent jurisdiction in this state : Cal. 1880,43,10.

And the company failing, for sixty days after notice, to remove the cause of such complaint, he shall make report thereof to the general assembly for such action as it may deem expedient ; or, if there be necessity for prompt action, he may take such legal proceedings as may be proper, and the attorney-general shall institute and conduct such proceedings : S.C. 1458.

In case any corporation shall persist in its refusal or failure to comply with such finding, and shall continue the unjust discrimination or unreasonable charges so found, such failure or refusal to obey such finding shall forfeit the charter of said corporation : S.C. 1883,325,4.

It shall be the duty of said commissioners to hear all complaints made by any person against any discrimination or unreasonable charges. Such complaints must be in writing, and specify the items in the tariff against which complaint is made. And if it appears to said commissioners that there may be justice in the complaint, or that the matter ought to be investigated, the commissioners shall forthwith furnish to the person or corporation operating the railroad a copy of the complaint, together with the notice that the said complaint will be heard by said commissioners ; and at such time and place it shall be the duty of the commissioners to hear the parties to the controversy, either personally or by counsel, and to hear such evidence, either oral or written, as may be offered ; and when the hearing is concluded, the commissioners shall give notice of their decision to the parties thereto, from which decision either party may appeal to the resident judge of the circuit of which the county in which the complaint arose forms a part : S.C. 1883,325,4.

If any railroad shall be guilty of a violation of such rules and regulations prescribed by the commissioners, and after due notice thereof fail to make ample recompense to any person injured as may be directed by the commissioners, it shall incur a penalty of from one thousand to five thousand dollars : and the person injured has a right of action for damages, which shall be exemplary damages in cases of wilful violation of law ; but all such suits must be brought within twelve months after the injury complained of : Ga. 719(i,j).

All contracts and agreements between railroads as to rates must be submitted to the commissioners for inspection and correction, and all arrangements and agreements whatever as to the division of earnings by competing railroads must be submitted to them for inspection and approval, in order to secure to all persons just and reasonable rates ; and said commissioners may make rules as to such contracts, and any such agreements not approved by them shall be illegal and void : Ga. 719(h).

When such person or corporation has adopted the recommendation or advice of the commissioners, in a matter in which they had authority to recommend or advise, proof of such fact shall be received in any suit or other legal proceeding in any court, or before any officer, as *prima facie* evidence that the thing done or omitted to be done, upon such recommendation or advice, was right and proper : Ala. 1143.

**Appeal.** There is a right of appeal to the court of common pleas for Richland County from any ruling or action of the railroad commission under this act, provided that the rate so fixed or ruling made shall prevail until the determination of the appeal : S.C. 1888,27,5.

So to "some court of competent jurisdiction in the county where the complainant

resides:" Wis. 1794. To the district court: Minn. 1891,106,3. And thence to the supreme court: Minn. ib. 4.

**Remedies at Law.** No request or advice of the board shall impair in any manner the legal duties and obligations of a railroad corporation, or its legal liability for the consequences of its acts, or of the neglect or mismanagement of any of its agents or servants: N.H. 155,17; Mass. 112,20; Vt. ib. 9; N.Y. 1890, 565,162; Mich. 3306; Kan. 23,172; Va. 1305; Mo. 2689; Ore. 4022; N.D. 1890,122,18; Col. ib. 5; S.C. 1461; Ala. 1143.

Nothing in this act shall be construed to estop or hinder any persons or corporations from bringing suit against any railroad company for any violation of any of the laws of this state for the government of railroads: Io. 1878,77,17; Kan. 23,192; Col. ib. 21.

Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute; but the provisions of this act are in addition to such remedies. Provided, that no pending litigation shall in any way be affected by this act: Minn. 500; Tex. 1891,51,23; N.D. 1890,122,18; S.C. 1545; Ga. 719(k); Miss. ib. 24.

In all cases under the provisions of this article the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided: S.C. 1544; Ga. 719(k).

**§ 8574. Repairs.** When the board deems that repairs are necessary on any railroad, or an addition to its rolling stock, or an addition to or change of its stations or station-houses, or change in its rate of fares or freight (except in Minn.), or in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, it shall in writing inform the corporation of the improvements and changes it considers proper (and a report of the proceedings shall be included in the final report of the board, N.H., Mass., Ore., Ala.): N.H. 155,14; Mass. 112,16; Vt. ib. 10; N.Y. 1890,565,161; Minn. 502; Neb. 1887,60,17; Va. 1301; Ore. 4018; 1891, p. 128; N.D. 1890,122,10; S.C. 1457; Ala. 1133.

The supreme or circuit court may enforce in equity compliance with such order: Vt. Ore., S.C.

The corporation is given a hearing; and if the corporation thereafter fails to carry out their order, they present the facts to the attorney-general (and report by special or annual report to the legislature: N.Y., Neb.): N.Y., Neb., S.C.

When the commissioner has reason to believe, on complaint or otherwise, that any track, bridge, or other structure is dangerous or unfit for the safe transportation of passengers, he may inspect or cause the same to be inspected by some competent persons, and may require the corporation to make necessary repairs (and regulate the speed of passing trains over such track, etc. until repairs are made, O., Mich.): Me. 1889,313,2; O. 247; Ill. 114,177; Mich. 3298; Mo. 2685; Miss. 1890,88.

If the board find the track, bridges, or rolling stock out of repair, so as to be unsafe, they shall immediately notify the managers, and prescribe a time in which the repairs shall be made, and may require them to reduce the speed of all trains until so made: Me. 51,116; Mich. 3298; Mo.

For the purpose of keeping the several railroad companies advised as to the safety of their bridges, they shall make a semiannual examination of the same, and report their condition to the said companies: Io. 1878,77,3; Ore. 1891, p. 127.

If any bridge shall be deemed unsafe by the commissioners, they shall notify the

railroad company immediately, and it shall be the duty of said railroad company to repair and put it in good order within ten days after receiving said notice : Io. 1878,77,3 ; Ore.

It is also specially made their duty to inspect depots, etc. (§ 8802) : Miss. ib. 18.

When, in the opinion of the commissioners, the running of passenger trains over any railroad will be attended with imminent danger, they may notify the superintendent, and order their stopping, and in default thereof obtain an injunction : Me. 51,118.

If the managers do not comply with such requirements, (1) the commissioners apply to the supreme court for an injunction against the running of passenger trains : Me. 51,117.

(2) The commissioners have power to wholly stop the running of such passenger trains : O. 247 ; Mich. 3298. Or any trains : Io. 1878,77,3 ; Ore.

(3) The commissioner makes report to the board of public works "for such action as it may deem expedient : " Va. 1301.

(4) The road is liable to a penalty, and the officers, conductors, etc. criminally : Mo. 2685.

(5) The commissioners bring suit : N.D.

If, upon examination of any railroad or its affairs, the commissioners are of opinion that the road is in such condition or its affairs are conducted so as to endanger the public safety, or that the company has violated the law or disobeyed their directions, they may obtain an injunction to restrain any person from exercising his duties as officer of such company : Ct. 3429.

Whenever in the judgment of said board any repairs are necessary upon road, or stations, or rolling stock, or additions thereto, or any changes in its rolling stock, stations, or warehouses necessary for the public safety and convenience, or any change in the mode of conducting its business or operating its road is reasonable and expedient in order to promote the security and accommodation of the public, or in order to prevent unjust discriminations against either persons or places, the board makes a finding of the facts, and an order upon the railroad to make such changes is served upon it ; and the railroad must show cause within ten days why it should not comply with said order by filing an answer with the board. If no answer is filed, the order is final ; but if an answer is filed, the board sets a day, not exceeding thirty days from the filing of such answer, for the hearing, and notifies the railroad or other persons interested, and after full investigation and hearing makes again a finding of the facts, and such order as it deems just ; then, if the railroad refuse to comply with such amended order, the board brings suit through the attorney-general for a writ of mandamus ; and upon the hearing of such cause, such finding and order shall be, as against the railroad, *prima facie* evidence of the reasonableness of such order, and of the necessity of such changes : Neb. 1887,60,17.

§ 8575. **Accidents.** The board shall investigate the causes of any accident on a railroad resulting in loss of life ; and of any accident not so resulting which it may deem to require investigation : N.H. 155,12 ; Mass. 112,18 ; Me. 1891,120 ; Vt. ib. 6 ; 1885,321 ; R.I. 1889,758 ; N.Y. 1890,565,159 ; O. 257 ; Ill. 114,177a ; Mich. 3441 ; Io. 1878,77,14 ; Va. 1303 ; Ore. 4019 ; Col. 1885, p. 314,17 ; S.C. 1459.

And notify the attorney-general of such hearing : Vt. 1888,20.

So, the county attorney : Me.

Provided, that such report shall not be evidence or referred to in any case in any court : Io. 1878,77,14 ; Col.

The railroad commissioner shall, upon receiving notice from any railroad corporation of any accident on said railroad, or upon public rumor of such accident, repair to the

place of such accident, and inquire into the facts and circumstances thereof: R.I. 158, 28; Ct. 3567; Miss. 1884,23,13; and said commissioner shall, without charge, furnish any person injured, or the friends of any person killed, any information he shall have obtained in relation to such disaster, and the names of the persons from whom the same was obtained, and by whom the same may be proved: R.I. 1889,758; Ct.

It is the duty of every railroad (of the superintendent thereof, N.Y., O.) to notify the commissioner of any accident attended with serious personal injury (loss of life, O.) immediately: R.I.; Ct.; N.Y.; O. 257; Ill.; Io.; S.C. 1525; Ala. 1138; Miss. 1888,26.

By telegraph: Me.; O. 257; Miss. Compare §§ 8561, 8863.

**§ 8576. Evidence.** Every railroad corporation shall at all times, on request, furnish to the board any information required by it concerning the condition, management, and operation of the road of such corporation: N.H. 155,18; Mass. 112,19; Me. 51,114; Vt. ib. 4; N.Y. 1890,565,163; Minn. 502; Neb. 1887,60,12; Va. 1304; Ore. 4020; N.D. 1890,122,10; S.C. 1460; Ala. 1136; Miss. 1884, 23,12; U.S. ib. 12; and particularly copies of all leases, contracts, and agreements for transportation with express companies or otherwise to which it is a party: N.H., Mass., N.Y., Ore., Ala.; and also with the rates for transporting freight and passengers upon its road, and other roads with which its business is connected: Mass.; Vt.; N.Y.; O. 256; Ore.; S.C.; Miss.

But the commissioners need not make public such information: N.Y.

The commissioners may, for the purpose aforesaid, examine the books, papers, or documents of the corporation, or its directors, treasurer, or officers, and those of the assignees, or trustees, or persons in the control of said road; and also may examine under oath any of said persons, or their employees, or other persons: Vt. ib. 3; R.I. 158,29; N.Y. 1890,565,157; O. 258; Ill. 114,179; Mich. 3295; Wis. 1796; Io. 1878,77,9; Minn. 504; Kan. 23,175; Neb.; Ky. 90a,V1,13; Mo. 2679,2680,2646; Tex. ib. 10; Ore. 4012; Col. ib. 12; N.D. 1890,122,13; S.C. 1465; Ga. 719(g); U.S. 1887,104,12.

The board have always access to the stock list, and may take copies therefrom: Mass. 112,23; S.C. 1469; Ala. 1136.

Railroad commissioners have general power to examine under oath: N.H. 155,20; Mass. 112,25; Vt.; R.I.; Ct. 3430; N.Y. 1882,353,4; O. 256; Ill. 114,180; Mich. 3296; Wis. 1796; Kan.; Neb.; Mo.; Tex.; Cal. ib. 7; Col. ib. 12; N.D. 1890,122,13; Ga. 719(o); Ala. 1140; Miss. ib. 20; U.S.

And send or subpoena for persons and papers: Mass.; Vt.; R.I.; Ill.; Mich.; Wis.; Kan.; Neb.; Mo.; Tex. ib. 13; Cal.; Col.; Ga.; Ala.; Miss. ib. 21; U.S.

And so specially they may examine any agent or employee as to stock he may hold, or pecuniary interest in any express, sleeping-car, freight, or rolling-stock company doing business with the road: O. 256.

Every officer or employee who shall wilfully neglect to furnish any report required in this act, or shall wilfully hinder or delay the commissioners in the discharge of their duties, is made guilty of a misdemeanor punishable (1) by fine or imprisonment: Mich. 3302; Io.; Mo. 2681; Col.

(2) By fine only: Vt. 1886,23,4; O. 259; Tex.; S.C. 1466; Ga. 719(p); Miss. ib. 21.

So, the corporation, by fine: N.H. 155,19; Mo. 2646; S.C. 1470.

And wilful false statement to the railroad commissioners, written or oral, under oath, is perjury: Vt. ib. 4.

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the commission, by deposition: U.S. ib.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission, or any party to a proceeding before the commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section: U.S. 1887,104,12; 1891, Feb. 10.

Any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding: U.S. 1887,104,12.

**§ 8577. Books and Accounts.** The board shall from time to time in each year examine the books and accounts of all corporations operating railroads or street railways, to see that they are kept in a uniform manner, and upon the system prescribed by the board: N.H. 155,11; Mass. 112,21; Mich. 3398. Statements of the doings and financial condition of the several corporations shall be prepared and published at such times as the board shall deem expedient: Mass.

On the application in writing of a director, or of any person or persons owning one-fiftieth part of the paid in capital stock of a corporation operating a railroad or a street railway, or owning the bonds or other evidences of indebtedness of such corporation equal in amount to one-fiftieth part of its paid in capital stock, the board shall examine the books and the financial condition of said corporation (and shall cause the result of such examination to be published in one or more daily papers, Mass., Ala.): Mass. 112,22; S.C. 1468; Ala. 1139.

It shall recommend a uniform system of railroad accounts, so as to conform to that of the other New England states, New York, and Canada: Vt. ib. 13.

**§ 8578. Reports.** The board shall make an annual (biennial, Ore., Vt., Ga., Miss.) report of its doings to the general court,<sup>a</sup> (1) including<sup>c</sup> such statements, facts, and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the commonwealth, and such suggestions as to its general railroad policy, or any part thereof, or the condition, affairs, or conduct of any railroad corporation, as may seem to it appropriate: N.H. 155,23; Mass. 112,13; Vt. ib. 11; N.Y. ib. 166; Ill.<sup>a</sup> 114,176; Mich.<sup>a</sup> 3294; Io.<sup>a</sup> 1878,77,4; Minn. 500; Kan.<sup>a</sup> 23,173; Neb. 1887,60,20; Va. 1310; Ky. 90a,VI,11; Tex. ib. 12; Ore. 4011g,4021; Col.<sup>a</sup> ib. 10; N.D. 1890, 122,18; S.C. 1462; Ga. 719(n); Ala. 1142; Miss. 1884,23,14; Ariz. ib. 13; U.S. ib. 21.

(2) "The condition and proceedings of the several railroad corporations, so far as public interest may require:" Me.<sup>a</sup> 51,114; Vt.; R.I. 158,30; 1889,758.

(3) The commissioner [also] collects and returns the railroad reports (§ 8560): N.H.; N.Y.; Wis. 1795; Io.; Kan.; Neb.<sup>b</sup> 1,16,88; Mo. 2682; Ore. 4021.

(4) "What changes should be made in the laws to promote the interests of both the railroads and the public:" Vt.; Minn. 500; Neb.; Ore. 4011; Tex. 4258b6; N.D.; Ga.; Ala.



So, what changes in the classification of freights, or what change in the rate of freights or fares, are advisable or necessary : Ore. 4011.

(5) Of their doings for the year ending September 30 preceding : N.H., Miss. June 30 : Neb., Col., Ala., Miss. 1890,88. November 1 : Va. December 1 : N.D., Ariz., U.S.

The accounts of receipts and expenditures of every railroad for the two preceding years, showing sources : Vt.

The railroad commissioners shall make a report of the general conduct and condition of all railroads, and of any violation of law by any of them, to each general assembly, not later than the fourth week of its session, with such suggestions for legislation as they may deem proper : Ct. 3432.

A special statement of accidents occurring (§ 8575) : Va., Ala.

The commissioner shall make to the governor, on or before the first day of January of each year, a report of the affairs and condition of all the railroad (and telegraph, O.) companies having lines in this state (and also of accidents on railroads resulting in injuries to persons, and the circumstances and cause thereof, O.) ; and he shall include in his report such other information, and such suggestions and recommendations, as in his opinion are of importance to the state : O. 264 ; Wis. 1795 ; Tex. 4258b6.

And particularly, first, whether in their judgment the railroads can be classified in regard to the rate of fare and freight to be charged upon them, and if so, in what manner : Ill. ; second, whether a classification of freight can also be made, and if so, in what manner : Ill. ; Mich. 3294.

They shall also, at such times as the governor shall direct, examine any particular subject connected with the condition and management of such railroads and warehouses, and report to him in writing their opinion thereon, with their reasons therefor : Ill. ; Mich. 3294 ; Minn. 500 ; Ore. 4011 ; N.D.

Whether any railroad corporations make any discrimination in the matter of freights between points intersected by competing lines and points not so intersected, and what change should be made in the law to promote the interests of railroads and the public : Mich. 3294 ; Ore. 4011.

Said commissioners shall, as soon as may be, report the result of such examination to the secretary of state, who shall communicate the same in printed form to the legislature at their next session : N.H. 157,8.

All such reports shall be laid before the legislature at its next session : Mich., Minn., Va., Ore.

The board shall make an annual report on or before the second Monday in January in each year, which shall contain : (1) A record of their meetings and an abstract of their proceedings during the preceding year. (2) The result of any examination or investigation conducted by them. (3) Such statements, facts, and explanations as will disclose the actual workings of the system of railroad transportation in its bearing upon the business and prosperity of the state, and such suggestions as to the general railroad policy of the state, of the amendment of its laws, or the condition, affairs, or conduct of any railroad corporation, as may seem to them appropriate. (4) Drafts of all bills submitted by them to the legislature, and the reasons therefor. (5) Such tables and abstracts of all the reports of all the railroad corporations as they may deem expedient. (6) A statement in detail of the travelling expenses and disbursements of the commissioners, their clerks, marshal, and experts. Five hundred copies of the report with the reports of the railroad corporations of the state, in addition to the regular number prescribed by law, shall be printed as a public document of the state, bound in cloth, for the use of the commissioners, and to be distributed by them in their discretion to railroad corporations and other persons interested therein : N.Y. 1890,565,166.

The commissioner shall inquire into, examine [and report biennially to the governor] :— Any neglect or infringement of the laws for the regulation of railroads, by

officers, employees, or agents of such roads. The condition of each railroad, its state of repair, and that of its carriages, engines, furniture and equipment, and its conduct and management for the public safety. (The causes of the failure of proper railroad connections, if there has been any, and wherein such failure consists: Vt.) The pecuniary condition and financial management of the railroads for each of the two preceding years: Vt. 1886,23,11; Wis. 1794; including in his report the amount of receipts and expenditures of each railroad for each of said years, from what sources the receipts were derived, and for what the expenditures were made: Vt.

The board shall prepare such tables and abstracts as it deems expedient of all the returns, and its annual report shall be transmitted to the secretary of the commonwealth on or before January in each year, to be laid before the general court: Mass. 112,26; N.Y.

It shall keep a record of all communications, acts, and proceedings, and facts learned relating to accidents: Ct. 3417; N.Y.

There shall be published annually, under the supervision of the railroad commissioner, three thousand copies of the report: Wis. 1797a; Mo. 2683.

To enable the commissioners to make such report, the president or officers of the railroad shall annually make to them returns in the form prescribed by them, offering the necessary information: R.I. 1890,834; N.Y.; Io. 1878,77,5; Kan. 23,174; Va. 1309; Col. ib. 11; U.S. ib. 20. Compare § 8563.

The said commission shall make and submit to the governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such commission as herein required, and such other facts, suggestions, and recommendations as may be by them deemed necessary, which report shall be published as the reports of the heads of departments: Tex. 1891,51,12(b).

Any officer or employee, failing to fill out blanks as aforesaid, is liable to a penalty; and the commission may prescribe a system of bookkeeping for all railroads: Tex. 1891,51,12(a).

The said commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary furnish said blanks to each railroad company. Any railroad company receiving from the commission any such blanks shall cause said blanks to be properly filled out so as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said commission at its office in the city of Austin within thirty days from the receipt thereof: Tex. 1891,51,12.

The commission shall ascertain as early as practicable the amount of money expended in construction and equipment per mile of every railway in Texas; the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the road-bed, track, depots, and transportation, and to replace all the physical properties belonging to the railroad. It shall also ascertain the outstanding bonds, debentures, and indebtedness, and the amount respectively thereof, when issued and rate of interest, when due, for what purposes issued, how used, to whom issued, to whom sold, and the price in cash, property, or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due and his address, the credits due on it, the property on hand belonging to the railroad company, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor. The commission shall also ascertain the amounts paid for salaries to the officers of the railroad, and the wages paid its employees. For the purpose in this section named, the commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the

information required by this section is obtained, it shall communicate the same to the attorney-general by report, and file a duplicate thereof with the comptroller for public use, and said information shall be printed from time to time in the annual report of the commission: Tex. 1891,51,11.

NOTES. — <sup>a</sup>To the governor: Me., Ill., Mich., Io., Kan., Neb., Va., Ky., Mo., Col., N.D., Ala. Ariz. To Congress: U.S. <sup>b</sup>The auditor. <sup>c</sup>Except in Georgia.

§ 8579. **State Directors** are required to make an annual report to the legislature, with suggestions as to measures necessary to secure to the public the greatest convenience and economy in the matter of freight and travel: Mass. 112,27.

A member of the legislature is not eligible for state director: Mass. 112,28.

No person employed by the railroad, or who owns stock therein, is eligible for state director: Mass. 112,28.

## CHAPTER II. — STOCK AND DEBT.

### Art. 860. The Corporate Stock.

§ 8600. **Nature.** (For amount, etc., see § 8523.) The shares in the capital stock of a railroad corporation shall be personal estate: Vt. 3345; N.Y. 1850, 140,8; N.J. R.Rs. 96; Ind. 3858; Ill. 114,14; Mich. 3320; Wis. 1825; Neb. 1,16,76; Md. 23,162; Ark. 5436; W.Va. 54,44; Tex. 4138; Nev. 846; Tenn. 1902; Dak. 1879,46,6; Mon. G. L. 681; N.M. 2651; Ariz. 307; Oka. 1032; Uta. 2329; Ga. 1689(g); Fla. 39,29; Ariz. 307.

Are "subject to sale or transfer (Neb.) and to execution according to law": Neb.; Md.; Tenn. 3747; Mon.

And to taxation as other personal property: Md. Compare Art. 899.

"Such corporation . . . may issue capital stock to such aggregate amount as may be deemed necessary, not exceeding the amount named in its certificate of organization: S.C. 1423. Compare § 8523.

§ 8601. **Payment.** (A) The directors may from time to time assess upon each share such sums of money (not exceeding in the whole one hundred dollars on a share,<sup>a</sup> Mass.) as they think proper: Mass. 112,57; Vt.<sup>a</sup> 3346; N.Y. 1850,140,7.

And may direct the same to be paid to the treasurer, who shall give notice thereof to the subscribers or stockholders: Mass. 112,57; Vt. 3346.

(B) The directors may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed, in such manner and in such instalments as they may deem proper: N.J. R.Rs. 95; Pa. R.Rs. 28; Ind. 3896; Ill. 114,13; Mich. 3319; Wis. 1824; Neb. 1,16,77; Md. 23,163; W.Va. 54,43; N.C. 1938; Ark. 5434; Tex. 4139; Nev. 847; Dak. 1879,46,5; Mon. G. L. 681; Uta. 2330; Ga. 1689(f); Ala. 1599; Fla. 39,6; N.M. 2655; Ariz. 308; Oka. 1031.

But ten per cent must be paid upon subscription: Neb. Md., Nev., Mon. So, five per cent before work commenced: Ga. See also § 8524.

Provided, that subscriptions shall not be required to be paid except in equal instalments of not more than ten per cent a month: Ind. 3896, Nev., Uta., N.M., Ariz. So, five per cent: Pa.

So, twenty-five per cent at once and not oftener than once in three months: Mon.

Provided, that if the whole capital stock has not been paid in, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount: N.M. 2655.

The company may open and keep an interest account with their stockholders from the dates of their payments of subscriptions : Mo. 2580.

**Subscriptions payable on Completion of the Road authorized.** The directors of a company which has expended in the construction of its road ten per centum of its authorized capital, and has obtained actual *bona fide* subscriptions to its capital stock to the amount of at least twenty per centum thereof, may receive subscriptions to its capital stock payable in such instalments, dependent upon the completion of the whole or any part of its road so that cars may pass over the same, as its directors may deem expedient, and upon full payment thereof may issue certificates of stock therefor; but no subscriber to the stock hereby authorized shall be entitled to any privileges of a stockholder until his subscription is fully paid, nor shall he, for any purpose, be deemed a stockholder until the happening of the contingency upon which the instalments on his subscription are made dependent : O. 3298.

A company which has begun and partly built its road, but is unable to finish and operate the same for want of means, may take subscriptions conditioned that the proceeds thereof shall not be used or applied upon the debts of the company; and all money or material collected upon such subscriptions, and all material or implements purchased with such money for the construction of the track, houses, depots, and rolling stock of the company, shall be exempt from execution or other process or proceedings for the payment of the debts of the company, so long as such money, material, or implements are used or designed for the construction of such track, houses, depots, and rolling stock : O. 3299.

NOTE. — “The sum at which the shares are fixed by its charter :” Vt.

§ 8602. **Forfeiture of Stock.** (A) When a subscriber has paid nothing upon his shares, the directors, after thirty days from the time when an assessment has become due, may declare them forfeited, and may transfer them to any responsible person who subscribes for the same and pays the assessments then due : Mass. 112,57.

(B) Or if a stockholder neglects to pay any assessment for thirty<sup>a</sup> days after notice from the treasurer, (1) the directors may order the treasurer to sell such shares<sup>d</sup> by public auction to the highest bidder, giving notice of the sale, and the shares shall be transferred to the purchaser : Mass. 112,57; Vt. 3347; Wis.<sup>a</sup> 1824; Md.<sup>a</sup> 23,164; Tex.<sup>b</sup> 4140; Nev. 847; Uta.<sup>b</sup> 2330; Mon.<sup>a</sup> G. L. 682; N.M.<sup>a</sup> 2655,2657; Ariz.<sup>d</sup> 308.

(2) The company may declare the shares forfeited, after sixty days' notice, personal or by mail (or publication, Ind., Ark.) : N.J.<sup>b</sup> R.Rs. 95; Pa.<sup>f</sup> R.Rs. 28; Ind.<sup>b</sup> 3896; Ill. 114,13; Mich.; Wis. 1754; Neb.<sup>c</sup> 1,16,78; N.C.<sup>a</sup> 1938; Ark. 5434; W.Va. 54,43; Ala.<sup>c</sup> 1600; Dak. 1879,46,5; Oka. 1031; Ga. 1689(f).

(3) The corporation may sue for such instalments : Pa., Neb.<sup>a</sup> 1,16,78, Md., Mich.,<sup>a</sup> Wis., Ala., N.M., Ariz.

If said company shall not declare such stock forfeited, then such neglecting stockholder shall be individually liable to said company for the amount unpaid upon the stock so held by him, until the whole amount of the capital stock so held by him shall have been paid to the company : N.J. R.Rs. 95.

If any stockholder shall neglect to pay such proportion or instalment so called for, at the time and place appointed, he, she, or they shall be liable to pay, in addition to the proportion or instalment so called for, interest at the rate of one per cent per month for the delay of such payment : Pa. R.Rs. 28.

Provided, that no forfeiture of stock shall release or discharge the owner thereof from any liabilities or penalties incurred prior to the time of such forfeiture : Pa. R.Rs. 28.

In the event of a forfeiture, the share or shares so forfeited may be disposed of at the discretion of the president and directors, under such rules and regulations as may be prescribed by the by-laws : Pa. R.Rs. 28.

If the shares of a stockholder do not sell for a sum sufficient to pay his assessments with interest and charges of sale, (1) he shall be liable to the corporation for the deficiency; if such shares sell for more, he shall be entitled to the surplus remaining: Mass. 112,57; Vt. 3348; Md.; Wis.

(2) The corporation may bid it in, but only at the total amount due; and the stockholder is thereupon discharged: N.M. 2658.

At such sale the person who will agree to pay the assessment so due, together with the expenses of advertisement and the other expenses of sale, for the smallest number of shares or parts of shares, shall be deemed to be the highest bidder. All stockholders shall be liable to such sale for instalments due: Nev. 847; N.M. 2655; Ariz.

NOTES. — <sup>a</sup> Sixty days. <sup>b</sup> Thirty days. <sup>c</sup> Ninety days. <sup>d</sup> "So many as may be necessary," in the noted states; see below. <sup>e</sup> Twenty days, as prescribed by the by-laws. <sup>f</sup> Six months.

§ 8603. **Fictitious Issues.** (Compare §§ 8114, 8553, 8634). (A) No railroad corporation shall issue stock (or bonds, Mich., Tex., Col.) except for labor done, services performed, or money or property actually received to the full amount: Col. 340; Mich. 3409; Minn. 2522, 2523; Tex. 4154-5; Ill. 114, 22; W.Va. 54, 52; Ala. 1601.

(B) No railroad company or any officer shall sell or pledge any stock, or issue certificates, until such shares are fully paid: Mich. 3409; Minn.

**Penalty.** If any officer so issue, sell, pledge, or dispose of any shares in violation of the provisions of this act, he shall be guilty of a misdemeanor: Mich. 3509; Minn.

(C) All fictitious stock, dividends, and other fictitious increase of the stock or indebtedness, shall be void: Mich., Minn., Tex., Col., Ill., W.Va.

(D) No railroad corporation of this commonwealth, its directors or officers, shall authorize or make any issue of its capital stock for money for a less amount than the full par value of each share of its stock, which par value in money shall be actually paid into the treasury of such corporation before the issue of any full paid certificate for such shares of stock: Pa. 1887, 44, 1.

No railroad corporation of this commonwealth, its directors or officers, shall authorize or make any issue of its capital stock, when such issue is to be in payment for labor done or property received, until after the president of such company shall have filed in the office of the secretary of the commonwealth a statement showing in detail the prices paid or to be paid for the several kinds of labor done, and for the property received or to be received, accompanied with the oath or affirmation of himself and of the chief engineer of said company that the prices shown by such statement as paid for, the several kinds of labor done, and for the property received or to be received, were not in excess of the prices for which, at the time the labor was done or the property contracted for, it could have been obtained for money paid, and that no certificate of stock has been or will be issued in payment for such labor or property for a larger amount than the actual cash value of the labor or property detailed in such statement: Pa. 1887, 44, 2.

Upon complaint of any stockholder, or any two reputable citizens resident in the region of the line the traffic of which will be affected by its construction, that such company is about to issue or has issued stock or bonds or other certificates of indebtedness in contravention of this act or of Pa. Const. art. 16, sect. 7, filed with the attorney-general, he shall institute proper proceedings to enforce this act on the part of the company; and any president, secretary, or treasurer of a railroad affixing his name or attestation to any certificate of stock or bond, or any director knowingly assenting to such issue in violation of this act, or any engineer or other officer making any affidavit

required by sect. 2 of this act to be made, containing any false statement, shall be guilty of a misdemeanor: Pa. 1887,44,4 & 5.

(E) Nor shall it issue any shares of stock in said company, except at its par value and to actual subscribers who pay or become liable to pay the par value thereof: Tex. 4154.

Provision may be made in the by-laws for issuing certificates prior to full payment, under such restrictions, and for such purposes, as the by-laws may provide: N.M. 2652.

§ 8604. **Payment in Land, etc.** (Compare § 8114.) It may be lawful for said corporations, by the consent of the directors of the same, to receive as subscriptions for the capital stock of said companies, under such regulations and restrictions as their boards of directors may prescribe, any lands, town lots, real estate, or other description of property as may be offered for that purpose: provided, however, that the same shall be sold (except so much as may be necessary for the use of said roads or for the purposes aforesaid) within a reasonable time, and the proceeds applied for the construction of said roads or their appurtenances: Ind. 3901.

It shall be lawful for any railroad company which is now or may hereafter be incorporated, to receive, by purchase or by subscription of stock, any lands, and to hold and convey the same, that may be necessary for the purpose of erecting depots, turn-outs, work-shops, warehouses, or for any other purpose necessary for the convenience of said company in order to transact the business usual for railroad companies: Ind. 3900.

It shall be lawful for any railroad or canal company which may be projected or in process of construction to receive land in lieu of money in payment of subscriptions to the unsubscribed capital stock thereof; which land may be received by said company in payment of such subscriptions at such valuation as may be agreed upon between said company and the party desiring to make such payment: Va. 1108.

Every such company may receive and hold any real estate which may be thus conveyed to it in payment of subscriptions to the unsubscribed capital stock thereof, and may sell, lease, mortgage, and encumber the same in such manner as it may deem best: Va. 1109.

Every such railroad corporation may sell, issue, and transfer its stocks or bonds, or both, for land, money, labor, property, or other materials to be used for the purposes for which the corporation was formed, and especially for the construction and equipment of its railroad; and in case it be found necessary to do so, it may sell and dispose of the same at less than the par value: W.Va. 54,52.

It has power to receive subscriptions to the capital stock, payable in lands, property, materials, work, labor, and otherwise, upon such terms and conditions as the directors and owners may agree and determine: W.Va. 54,68.

So, payment for the stock may be made in land, money, bonds, machinery, materials, and work, at such rates as may be agreed upon: S.C. 1885,96,3. In "property, real or personal:" Ga. 1689(f).

All subscriptions to or for the capital stock must be payable in money; but the commissioners may receive subscriptions payable in money, the subscribers having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated necessary labor for the corporation, at the reasonable value of such services or labor; or in property the corporation has capacity to acquire and hold, or in lands in any county through which such railroad may run, at the reasonable value thereof, the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation: Ala. 1577.

The board may prescribe, when the subscription may be paid or discharged in services, or in labor, or in the transfer or conveyance of property, when the services are to be rendered, or the labor is to be performed, or the property to be transferred or conveyed, appointing different times for the one or the other, as they may deem the interests of the corporation may require: Ala. 1599.

Upon such declaration of forfeiture (§ 8602) the subscriber is released and discharged from all liability to the corporation upon his subscription for stock, or upon his contract to pay such subscription in services, or in labor, or in the transfer or conveyance of property, and ceases to be a stockholder; but his liability to the existing creditors of the corporation is not impaired by such forfeiture: Ala. 1600.

That all certificates of stock heretofore issued and not legally cancelled by any railroad corporation organized under the laws of the territory or state of Kansas shall be valid and binding as against such railroad corporation, unless an action be brought to annul or cancel the same within one year after the passage of this act, and successfully prosecuted: Kan. 23,64a.

That all certificates of stock which may hereafter be issued by any railroad corporation organized under the laws of this state, shall be valid and binding as against the corporation issuing the same, unless an action be brought to annul or cancel the same within two years from the date of issuing the same, and successfully prosecuted: Kan. 23,64b.

**§ 8605. Completion of Payment.** (Compare § 8517.) A certificate stating the amount of capital so fixed and paid in must be filed with the secretary of state or state auditor, by the president, etc., within thirty days after the payment of the last instalment: Ind. 3899; Ark. 5437; Nev. 850; Cal. 5459; Uta. 2332; Ariz. 311.

**§ 8606. The Stock Certificate.** (Compare § 8117.) The company shall deliver one or more certificates or evidences, (1) signed by the president, countersigned by the treasurer, and sealed with the common seal of the corporation, to each person or party entitled to receive the same: Pa. R.Rs. 27.

(2) It is signed by the president and secretary, in such manner as may be prescribed by the by-laws: Nev. 848; Uta. 2331; N.M. 2652; Ariz. 309.

**§ 8607. The Stock-Book.** (Compare § 8156.) There shall be kept at such office, for the inspection of the stockholders of such corporation (A) books in which shall be recorded: —

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by each of them respectively.
3. The amount of stock paid, and by whom.
4. The transfer of stock, with the date of transfer.
5. The amount of the assets and liabilities of the corporation (except in Pa.).
6. The names and places of residence of its officers: Tex. 4117; 4115a; Pa. R.Rs. 37; Ill. 114,7; W.Va. 54,40.

(B) A "Book of Stockholders," which shall contain the names of all persons, alphabetically arranged, who are or shall have been stockholders of said company, and showing their places of residence, if known, the number of shares of stock held by them respectively, the time when they respectively became the owners of such shares, the amount of cash actually paid to the company by them respectively for their stock, as also the time when they may have ceased to be stockholders: which book during the office hours of said secretary shall be open for the inspection of stockholders and creditors of the company, and their personal representatives, at the office of said secretary. There shall also be kept by the secretary a transfer-book: Nev. 845; Uta. 2328; Ga. 1689q; Fla. 39,29; N.M. 2650; Ariz. 306.

## **Art. 861. Increase and Decrease of Capital.**

**§ 8610. Purposes.** Railroad corporations may increase their capital stock, (1) for the purpose of building a branch or extension: Mass. 112,60; O. 3307.

(2) Or of aiding in the construction of another railroad : Mass. 112,60.

(3) Or of taking stock in an elevator corporation : Mass. 112,60.

(4) Or of erecting and operating grain elevators in the commonwealth : Mass. 112,60.

5. "From time to time, if the capital stock is found insufficient for constructing and operating ("constructing" only, in Mon.) the railroad : Mass. 112,45 ; Me. 51,5 ; Vt. 3318 ; N.Y. 1859,140,9 ; 1889,426 ; N.J. R.Rs. 97 ; O. 3307 ; Ind. 3885 ; Ill. 114,15 ; Mich. 3352 ; Wis. 1826 ; N.C. 1939 ; Mo.<sup>a</sup> 2548 ; W.Va. 54,45 ; Tex. 4145 ; Nev. 839 ; Dak. 1879,46,7 ; Mon. G. L. 698 ; Ga. 1689(h) ; Fla. 39,8 ; Ariz. 301 ; N.M. 2665 18 ; Oka. 1033.

(6) "If, in the opinion of the directors, it is necessary to complete and equip the road and carry out the full intent of their charter:" Pa. R.Rs. 6.

(7) "To construct and fully equip the road:" Pa. R.Rs. 22.

So, for the "building, repair, equipment, or conducting of the road:" Ind. 3890 ; Mich. 3352 ; N.M.

(8) To construct a second track : O.

(9) To increase its machinery, rolling stock, or fixtures : O.

(10) To pay any bonds issued or guaranteed by it : O.

(11) To purchase any road within the state which may be sold by judicial order, or complete its line of road : O.

(12) To liquidate any floating debt or other liabilities incurred in construction or equipment : O.

(13) Whenever the directors deem such increase required : Neb. 1,16,79 ; Md. 23, 165 ; Ark.<sup>a</sup> 5488 ; Tenn. 1901.

(14) No purpose is specified : Ala. 1589 ; Minn. 2519.

(15) Any railway company of this state may also, for any other purpose authorized by its acts or articles of incorporation, create, issue, and dispose of such amounts of stock as the boards of directors may find necessary for such purpose : Minn. 2537.

If the capital stock is insufficient for construction and equipment, the corporation may, at a special meeting (at any meeting, N.H.), increase the same to the amount necessary (and in like manner reduce the same, but not below the limit prescribed in § 8523, Mass.), and in like manner change the gauge ; a certificate of such increase, or reduction, or change of gauge being filed with the secretary of state ; N.H. 156,17 ; Mass. 112,45.

A corporation changing its gauge from narrow to broad must comply with all provisions of law relating to broad gauge railroads : Mass. 112,45.

It must "increase its stock to correspond:" N.H.

NOTE.—<sup>a</sup> The bonded indebtedness may be increased in the same way and for the same causes : Mo., Ark. See Art. 864.

§ 8611. **Manner.** Such increase may be made, **(A)** by simple vote of the directors : Ind. 393 ; Tenn.

**(B)** Such increase must be sanctioned by two-thirds vote<sup>c</sup> of all the stock at a meeting called by the directors for the purpose : Me., Vt., N.Y., N.J., Ill., Mich.,<sup>b</sup> Wis.,<sup>c</sup> N.C., W.Va.,<sup>c</sup> Tex., Dak., Ga.,<sup>a</sup> N.M.,<sup>a</sup> Oka. 1033.

So, by a majority of the stock : Pa., O. 3308, Mich.,<sup>a</sup> Minn., Neb.,<sup>c</sup> Mo.,<sup>c</sup> Ark., Nev., Ala., Mon., Fla., Ariz.

Three-fourths : Md. 23,165.

After twenty days<sup>d</sup> (thirty days, O., Ala. ; sixty, Ill., Mich., Tex. ; ten, Vt.) written notice given or mailed to each stockholder, stating time, place, and object of meeting and amount of increase : Vt. 3319, N.Y., N.J., O., Ill., Mich., Wis., N.C., Tex. 4146-7, Dak., Oka., Ga., Ala., Fla.



Publication, four weeks : W.Va., Ala., N.Y. Sixty days before : Ill., Mich.

Such increase requires also the consent of the board of railroad commissioners (or state engineer and surveyor, if none such, N.Y.) : N.Y. ; Minn. 2522.

The resolution, etc. must be recorded with the secretary of state : Vt. 3320 ; W.Va. ; Tex. 4149 ; Ala. ; Neb. ; N.M. And published : Neb.

It is effected by merely filing a certificate with the secretary of state : Md.

(C) A railroad corporation authorized to increase its capital stock may, if its board of directors so decide, cause written notice of such intended increase to be given to each stockholder who was such at the date of the vote to increase, stating the amount of such increase and the proportion thereof in shares or fractions of shares which he would be entitled to receive on a division of the same, and fixing a time, not less than thirty days from the date of said notice, within which he may subscribe for such additional stock ; and each stockholder may, within the time fixed, subscribe for his proportion of such stock at par, and the same shall be paid for in cash, on the issue of a certificate therefor : Mass. 112,58.

If such shares are not so offered to the stockholders, the corporation, if the cash market value of its shares exceeds the par value thereof, shall sell them in the manner hereinafter provided, to the number necessary to produce the amount of money for which such increase of capital is authorized ; and if, after the expiration of the notice provided for in the preceding section, any shares of such stock remain unsubscribed for by the stockholders entitled to take them, the same shall be sold in the same manner : Mass. 112,59.

Not exceeding two thousand shares of the stock of any such corporation shall be offered for sale on any one day ; and no share shall be sold or issued for a less sum, to be actually paid in cash, than the par value thereof : Mass. 112,59.

Whenever any railroad company shall desire to increase its capital stock, it shall make application to the railroad commissioners in writing, setting forth the amount to which and the purpose for which it is desired to make such increase. Whereupon the commissioners shall fix a time and place for hearing such application, and require such notice thereof to be given as they may deem reasonable : Ct. 3450.

The commissioners shall make a finding of all the essential facts presented to them in regard to such proposed increase of capital stock, and report the same to the next session of the General Assembly, with a recommendation whether such increase should be allowed or not, and if allowed, the manner in which and terms upon which such stock should be issued : Ct. 3451.

No railroad company shall increase its capital stock except by special authority of the general assembly, nor shall such authority be given except upon the recommendation of the railroad commissioners as herein provided : Ct. 3452.

When a railroad increases its stock, the directors and president may determine by resolution in what manner and by whom the same shall be subscribed, or to whom issued and sold, and the amounts of the instalments to be paid thereon, and time and manner of payment : Pa. R.Rs. 131.

The meeting to increase must be called by a majority of the directors : O. (So, probably, in other states.)

Any railroad company may increase the amount of its capital stock by filing in the office of the secretary of state a certificate stating the amount of such desired increase and the reasons or necessity for the same, signed by the president or a majority of the directors, and attested by the secretary and seal of such company : Ind. 3931.

Whenever any railroad company shall desire to increase its capital stock, it shall make application to the railroad and warehouse commission in writing, setting forth the amount to which and the purposes for which it is desired to make such increase ; whereupon the commission shall fix a time and place for hearing, and require such notice as they may deem reasonable : Minn. 2519.

No railroad company shall increase its capital stock except by special authority of the railroad and warehouse commission as herein provided : Minn. 2520.

The commission shall make a finding of all the essential facts, and they shall prescribe the manner in which and the terms upon which such stock shall be increased. If the commission refuse their approval to the issue of such capital stock, the reasons for such refusal shall be stated in their next annual report to the legislature : Minn. 2522.

Prior to the issuance of any stock under the provisions of this act (see § 8610, 15), the company issuing the same shall file with the secretary of state a duly authenticated resolution of its board of directors, stating the number and par value of the shares so to be issued, and the particular purpose for which the same are to be issued : Minn. 2537.

Provided, that nothing contained in this act shall authorize any railway company to sell its capital stock for less than full par value thereof in money, property, work, or services : Minn. 2537.

When, at any time after filing the articles of incorporation, it is ascertained that the capital stock therein set out is either more or less than actually required for constructing, equipping, operating, and maintaining the road, by a two-thirds vote of stockholders the capital stock must be fixed, and a certificate thereof, and of the proceedings, filed with the secretary of state : Cal. 5458.

NOTES. — <sup>a</sup> Or at any annual meeting : Mich., Wis. <sup>b</sup> When the increase is wanted under clause (5) in § 8610. <sup>c</sup> Their assent is sufficient.

§ 8612. **Amount.** (Compare § 8634.) Railroads are authorized to increase their capital stock or borrow money sufficient for the purpose of laying a second track, but not to exceed an increase of \$10,000 per mile : N.Y. 1847, 405.

All the stock, original and increased, may not exceed \$150,000 per mile ; and the sum total of stock and bonds, \$300,000 per mile : Pa. R.Rs. 6.

All the stock may not be increased to a sum greater than (1) \$15,000 per mile : Ind. 3890.

(2) The estimated cost of the road : Ark. 5488.

(3) Ten millions of dollars : Ala.

**Payment.** No railroad corporation, authorized by its charter to increase its capital stock, shall issue shares for a less amount to be paid in on each than the par value of the shares in the original stock of the corporation, unless all the stockholders in the corporation agree, in writing, that such shares may be issued for a less sum : Vt. 3344.

§ 8613. **Reduction.** The associates may from time to time, at a meeting called for the purpose, reduce the amount of the capital stock, but not below the limit prescribed in the preceding section ; and they may, in like manner, change the gauge of their road to the other gauge allowed by said section : Mass. 112, 36.

The stock may be reduced in the same manner as it is increased (see above) : Nev. 839 ; N.M. ; Ariz.

The par value may be reduced by vote of directors : Nev. 835.

In case of a reduction of the capital stock, such certificate shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its debts and liabilities, and that the actual market value of the stock before reduction was less than its par value. In case of the increase or reduction of the capital stock of a railroad corporation, the certificate shall have indorsed thereon the approval of the board of railroad commissioners : N.Y. 1890, 564, 16.

In case the capital stock of any railroad company formed under the act to which this is a supplement, or otherwise, shall be found more than sufficient for constructing and operating its road, the board of directors of such company, upon first obtaining the

consent in writing of at least two thirds in amount of all the stockholders of such company, may, by resolution, to be entered on the minutes, reduce the capital stock of such company : N.J. Suppl. R.Rs. 37.

A railroad may reduce its stock by three-fifths vote of the stockholders at any meeting, but not below the minimum amount prescribed by law : Mo. 2557.

§ 8614 **Penalties.** If a railroad corporation owning a railroad in this commonwealth, and consolidated with a corporation in another state owning a railroad therein, increases its capital stock, or the capital stock of such consolidated corporation, except as authorized by this chapter, without authority of the general court, or without such authority extends its line of road, or consolidates with any other corporation, or makes a stock dividend, the charter and franchise of such corporation shall be subject to be forfeited, and to become null and void : Mass. 112,61.

## **Art. 862. Preferred Stock.**

§ 8620. **When Issued.** A railroad company may issue preferred capital stock, in shares of not less than fifty dollars each, to have preference over the common capital stock of such company, in dividends to be made out of the profits of the business, not exceeding seven per cent per annum, for the purpose of paying, discharging, retiring, or exchanging an outstanding claim, lien, mortgage, or incumbrance against such company or upon its property, if the stockholders thereof, at a meeting called for that purpose, by a vote of at least two thirds in amount of the shares of such company represented or voted upon at such meeting, order such issue : Vt. 3339.

Notice of such meeting must be published for three weeks in papers in St. Albans, Rutland, New York, and Boston : Vt. 3340.

The original stockholders in such corporation shall have the first right to take such preferred stock in proportion to the amount of original stock owned by them : Vt. 3341.

The holders of such preferred stock shall have the same right to vote at stockholders' meetings as the holders of the common stock of said company, and shall be equally qualified to be officers thereof : Vt. 3342.

Railroad corporations, for the purpose of building or furnishing their respective roads, or the payment of their just debts, may, when authorized so to do by a vote of the stockholders at a meeting called for that purpose, issue stock, guaranteeing thereon a certain dividend not exceeding eight per cent per annum, for such term of time as they deem expedient : and such guaranty shall be binding on the corporation : Vt. 3343.

The increased stock (§ 8612) may be "common" or "preferred," as shall be designated in the call for the meeting of the stockholders : if preferred stock be issued, the company may guarantee to the holders thereof semiannual or quarterly dividends to an amount not exceeding six per centum per annum, payable at its office, or at such other place as the directors may designate ; the stock may be sold at such time and place, either within or without the state, as may be deemed advisable, and the proceeds thereof applied to the purposes for which it is issued : the unpreferred stock of the company shall be entitled to dividends only out of the surplus of the profits, after setting apart a sum sufficient to pay the dividends upon the preferred stock, and the company which issues such preferred stock shall reserve the privilege of redeeming and canceling the same at par, at any time after three years from the date of its issue ; and the preferred stock herein provided for may be convertible into bonds of the company, at the option of the parties : O. 3309.

Within ten days after such meeting the president and secretary of the company shall make an abstract, stating the whole amount of pre-existing capital stock, the amount authorized, the number of shares of stock upon which all the instalments called

for by the board of directors have been paid, and the vote at the meeting, and add a certificate that the provisions of the two preceding sections have been fully complied with : and they shall make affidavit to such abstract and statement, and file the same in the office of the secretary of state, who shall cause the same to be recorded : O. 3310.

Any railroad may, at a meeting of its stockholders, called as provided in [§ 8611], in lieu of issuing preferred stock, as provided above, provide for borrowing money to locate, construct, and equip its proposed line of railway, or for the purpose of leasing or purchasing and equipping branch or connecting roads, constructed or in process of construction, not exceeding ten miles in length, or for redeeming or exchanging any part or all of its previously issued bonds, or for funding its floating debt, or for any or all of said purposes, in such an amount as it may deem necessary, not exceeding its authorized capital stock, and at such rates of interest as may be agreed upon between the respective parties, not exceeding seven per cent per annum, payable semiannually or quarterly, as they may direct, and may execute and issue securities therefor, and to secure the payment thereof may pledge the entire property and net income of such company, by mortgage or otherwise. Said securities may be expressed in dollars or in the currency of the country where disposed of, and may be disposed of upon such terms and at such rates as may be agreed upon between the respective parties, not inconsistent with the laws of this state. The proceeds of sale of such securities shall be applied only as now required by law : O. 3309a.

Any railroad company hereafter formed may, in its articles of incorporation, provide for the division of its capital stock into common stock and classes of preferred stock, by stating therein the amount of each kind and class of stock, the par value of the respective shares thereof, and the vote which shares of each class shall have. And it may further provide in such articles terms and conditions of such preferred stock in addition to, and not inconsistent with, the provisions of section 3309 : O. 1891,267.

For the purpose of providing means for the payment of its debts, and for the construction of its road, materials, or equipments, such company may issue preferred stock to an amount not exceeding one half of the amount of its capital, with such priority over the remaining stock of such company, in the payment of dividends, as the directors of such company may determine, and shall be approved by a majority of the stockholders : Ind. 3912.

"Any such company may provide for the issue of preferred or secured stock, for the purpose aforesaid, upon such terms and conditions as to them may seem meet : " Mich. 3352.

When it shall be necessary to make loans in order to meet just liabilities or carry out the objects and duties of the corporation, if any creditors holding its bonds or other indebtedness shall be willing to exchange the same for preferred or secured stock, the corporation may issue such stock on vote of majority of the stockholders, and secure in any lawful mode the prescribed dividends thereon in preference to dividends upon other stock ; provided that no such dividends shall be at a greater rate than eight per cent, unless all the stockholders shall vote therefor, and in no case greater than the legal rate of interest at the time of issuing such stock : such preference may be full or partial, and subject to such conditions or terms as the corporation deem proper, and redeemable and payable upon such terms and at such times as may be provided ; but it may not be sold at less than its par value : Mich. 3407.

Any such corporation, with the assent of two thirds of all the stockholders in interest, may issue in payment of debts preferred stock, not exceeding ten thousand dollars for each mile of railway constructed, which stock shall be entitled to such dividends as the directors of the corporation may determine, not exceeding eight per cent per annum, if the same is earned in any one year after payment of all interest on the bonds of the corporation before any dividend is made to the common stock : Io. 1286.

Such preferred stock, and any income or mortgage bond of the corporation, shall, at

the option of the holder, be convertible into common stock in such manner and on such terms as the board of directors thereof may prescribe ; but the aggregate amount of the common and preferred stock shall not exceed the total amount of stock which the corporation may be by law or the articles of incorporation thereof authorized to issue : Io. 1287.

Any railway corporation which has no surplus, after paying its running expenses, with which to pay the interest on its bonded indebtedness, with the assent of its bondholders, in addition to the right conferred by section 1286 of the Code, may, with the assent of two thirds of its stockholders, issue such preferred stock at par, to an amount equal to and not exceeding its bonded indebtedness, in exchange for its said bonded indebtedness : Io. 1874,20.

Any railroad shall have the power to create, issue, and dispose of special stock, preferred stock, and income certificates, to such amounts, in such form, and for such purposes as may be determined upon by the board of directors of such corporation, with the assent thereto of the holders of at least two thirds in amount of the common capital stock ; provided, however, that no increase of any special or preferred stock, or of any income certificates, issued pursuant to this act, shall at any time be made without the assent thereto of the holders of two thirds in amount of the special stock, preferred stock, or of the income certificates to be affected by such issue, as the case may be : Minn. 2517.

A railroad may, in such manner and to such extent as prescribed by its directors and assented to by two thirds of the capital stock, confer upon the holders of its bonds or other obligations, or upon any particular class thereof, or upon holders of special or preferred stock or income certificates, or all or any of them, the right to vote for directors, and also to choose from such bondholders or stockholders one or more members of its board of directors : Minn. 2518.

A railroad may make and enter into any agreement with the holders of its bonds, preferred stock, income certificates, or any class thereof, in relation to the sale, lease, or control of the property and franchises of such corporation, which shall receive the assent thereto of the holders of two thirds in amount of each class of such stock and income certificates then outstanding, at a meeting to be called like ordinary stockholders' meetings ; provided that a certificate thereof be filed with the secretary of state, and that a copy of such agreement be printed upon or attached to the class of bonds or stock with the holders of which such agreement shall have been made, and also on the common stock certificates : Minn. 2533.

In Missouri a railroad may receive subscriptions to its stock known as "transportation subscriptions," and issue "transportation certificates" therefor which have an amount equal to one share, entitling the holder to all the privileges of a stockholder : but to no liabilities for debts or obligations of the company ; and they are an irrevocable first lien and charge upon such railroad and all property of the company, inferior only to the employees' lien and recorded mortgages before the date of such subscription : Mo. 2550.

When a railroad decides by majority vote to obtain subscriptions under transportation certificates, they prepare a statement of the terms for the same, together with the rates at which they propose to transport passengers and freight in exchange for such certificates, and may then open a subscription-book and issue them accordingly : and they may be payable in money, materials, or labor, and the company is bound to furnish transportation according to the terms thereof : Mo. 2551,2552.

These certificates draw interest at the rate of six per cent, and are assignable by indorsement, and entitle the holder or his assignee to transportation, either freight or passenger, to the amount equal to the face value and accrued interest ; provided that the company may require one half of each freight bill or fare to be paid in cash : Mo. 2553.

An exact record of such certificates must be kept by the company : Mo. 2554.

A railroad may issue preferred stock to such amount and upon such terms as the directors may prescribe upon vote of the stock at a regular meeting or at a special meeting, upon unanimous vote; such stock being entitled to dividends at ten per cent per annum, and the stockholders to have no greater power to control than the holders of common stock; and it must be offered to all common stockholders *pro rata*, and only such part of it sold as they fail to subscribe to after thirty days' notice by publication: Mo. 2558.

Any railroad corporation whose line is wholly or partly within this territory, whether chartered by, or organized under, the laws of this territory or of the United States, or of any other state or territory, shall have power to create, issue, and dispose of such amount and character of special, preferred, or full paid stock of the capital stock of such corporation as may be deemed advisable by its board of directors: Mon. G. L. 705.

§ 8621. **Exchange.** Every domestic corporation of any kind, having preferred and common stock, may, upon the written request of the holder of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor share for share, or upon such other valuation as may have been agreed upon in the scheme for the organization of such corporation, or the issue of such preferred stock; but the total amount of capital stock shall not be increased thereby: N.Y. 1890,564,47.

#### **Art. 863. Of the Stockholders.**

§ 8630. **Liability.** (See also § 8553 and Art. 814 for other states.) Each stockholder of any company formed under this act shall be individually liable to the creditors of such company, (1) to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company, until the whole amount of the capital stock so held by him shall have been paid to the company: Ill. 114,17; Neb. 1,16,112; W.Va. 54,47; N.C. 1940; Tex. 4143; Ga. 1689(g); Fla. 39,7.

(2) To the value of his shares held at the time the debt was created, and five per cent of the par value thereof additional: S.C. 1885,96,7.

*Provided* such demand was payable within one year, and proceedings are commenced to hold such stockholder liable while he remains a stockholder therein, or within two years after he shall have ceased to be one: S.C.

But in no other case shall the stockholders be individually liable for the debts of the corporation: Neb.

And all laws whereby the stockholders, officers, and agents of any railroad corporation are made individually liable for the debts or liabilities of such corporation beyond the provisions contained in the act entitled "An Act to authorize the formation of railroad corporations, and to regulate the same," passed April 2, 1850, and the acts amending the same, are hereby repealed: N.Y. 1850,140,10.

§ 8631. **Trustees, etc.** No person holding stock in any such company as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly: N.Y. 1850,140,11; Ill. 114,16; Wis. 1827; N.C. 1941; W.Va. 54,46; Mo. 2549; Ark. 5440; Tex. 4144; S.C. 1885,96,7; Fla. 39,9; Okla. 1034; and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate, or

the ward, or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name: N.Y., Wis., N.C., Mo., Ark., S.C., Fla., Oka.

Every such administrator, executor, guardian, or trustee shall be allowed to represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder: Ark. 5441; N.M. 2641. Compare § 8055.

§ 8632. **Transfer.** (See § 8607.) It may be transferred by any conveyance in writing: Mass. 112,56; Me. 51,55; Vt. 3345; N.Y. 1850,140,8; N.J. R.Rs. 96; Mich. 3320; Wis. 1825; Ala. 1601; as provided by the by-laws of the corporation: Vt.; N.Y.; N.J.; Ind. 3898; Ill. 114,14; Mich.; Wis.; W.Va. 54, 44; Ark. 5436; Tex. 4138; Dak. 1879,46,6; Ga. 1689(g); Fla. 39,7; Oka. 1032. And see § 8537.

By indorsement and delivery of the certificate: N.M. 2651; Ariz. 307.

Such transfer or conveyance must be recorded by the treasurer, etc. in books to be kept in his office: Mass. 112,56; Me.; Minn. 2454; Tex. 4138; Nev. 845; Uta. 2328; Ala. 1601; N.M. 2650; Ariz.

Or by an officer duly authorized by the directors in books to be kept at such other place as they may appoint: Mass. 112,56.

When recorded in such place, the transfer must within ten days thereafter be also recorded in the books kept by the treasurer: Mass. 112,56.

No conveyance of shares, unless so recorded, is valid as against any other persons than the grantors or their representatives [except, in Mass., as in §§ 8152, 8153]: Mass. 112,56; Me.; Minn.; Tex.; Nev.; Uta.; Ala.; N.M.

On making the transfer, a new certificate shall be issued: Mass. 112,56; Me.

"The stock shall be transferable in the manner provided by the preceding section [§ 8607], and upon the books of the company, upon proper assignment and delivery to the assignee of the certificate of stock:" Nev. 846; Uta. 2329; Ariz. 307.

The entry must show the person to and by whom transferred, the numbers and designation of the shares, the date, and be duly attested by said secretary; and the book is presumptive evidence of the facts stated: Nev. 845; Uta.

Stock shall be transferable, at the pleasure of the holder, in a suitable book or books to be kept by the company for that purpose, in person or by attorney duly authorized in the presence of the president or treasurer, subject however to all payments due or to become due thereon: Pa. R.Rs. 27.

§ 8633. **Effect.** The purchasers and owners of the shares so purchased shall be liable for subsequent assessments thereon, and payment thereof may be enforced as above provided: Vt. 3349.

The assignee, or party to whom the same shall have been so transferred, shall thereupon be a member of said corporation, and have and enjoy all the immunities, privileges, and franchises, and be subject to all the liabilities, conditions, and penalties incident thereto, in the same manner as the original subscriber would have been: Pa. R.Rs. 27.

No certificate shall be transferred so long as the holder thereof is indebted to said company, unless the board of directors shall consent: Pa.

That no such transfer of stock shall have the effect of discharging any liabilities or penalties theretofore incurred by the owner thereof: Pa.

But no person holding any such stock by purchase and assignment from another, or who shall purchase any such stock at a public sale thereof, or who shall receive any such stock on payment of any debt or demand against such corporation, shall be liable to the creditors of such company for any sum whatever which may be due or unpaid on such stock, or any part thereof, due from another: W.Va. 54,47.

Any stockholder transferring his shares of stock in manner aforesaid, and in compliance with the by-laws of the company, and the same being approved by the board of directors, as aforesaid, shall, from and after the date of such approval, cease to be a stockholder in such company, and shall not be liable to any further calls from the directors, nor for any debts that may be contracted by said company thereafter: Ariz. 397; Uta. 2329.

**Prerequisites.** But no shares shall be transferable until all previous calls thereon shall have been fully paid in: N.Y. 1850,140,8; N.J. R.Rs. 96; Ind. 3898; Ill. 114,14; Mich. 3320; Wis.: W.Va.; Ark.: Tex.: Nev. 846; Cal. 5455; Dak.; Uta.; Ga.; Fla.; N.M.; Ariz.; Oka.

Except by consent of the directors: Mich., W.Va.

Unless the shares have been duly (§ 8602) forfeited: Ind., Ark.

A certificate for stock not fully paid must show on its face the amount paid up: Mich.

Nor shall any such transfer be valid except as between the parties thereto unless at least twenty per cent shall have been paid thereon, and certificates issued therefor, and the transfer approved by the board of directors (except by consent of the board of directors, N.M.): N.M. 2651; Ariz.: Cal. 5455.

The corporation may keep an office at any place or places without the state the board of directors may appoint, for the transfer of stock held or owned by persons not residing within the state: Ala. 1601.

§ 8634. **Dividends** of so much of the profits of such company as shall appear advisable to the directors shall be declared: N.J. R.Rs. 104; Pa. R.Rs. 29; Neb. 1,16,80; Md. 23,166; Mon. G. L. 683.

In the months of July and January in each and every year: Pa.

Said dividends shall in no case exceed the amount of the net profits actually acquired by the company, so that the capital stock shall never be impaired thereby: Pa.

If the said directors shall make any dividend which shall impair the capital stock of the company, the directors consenting thereto shall be liable in their individual capacities to such company for the amount of the capital stock so divided, recoverable by action of debt as in other cases; and each director present when such dividend shall be declared shall be considered as consenting thereto, unless he forthwith enter his protest on the minutes of the board, and give public notice to the stockholders of the declaring of such dividend: Pa.

The president and directors of any company incorporated under this act shall declare and make such dividends as they may deem prudent and proper from time to time out of the net profits of the said railroad: N.J. R.Rs. 104.

The capital stock of any stock corporation shall be deemed impaired when the value of its property and assets, after deducting the amount of its debts and liabilities, shall be less than the amount of its paid up capital stock: N.Y. 1890,564,23.

Every vote of the board of directors of any such corporation declaring a dividend shall be taken by ayes and noes, to be entered and recorded in the minutes of the proceedings of the board, which shall be open to the inspection of every stockholder and creditor of the corporation daily during the usual hours of business: N.Y. 1890,564,23.

They are also hereby empowered to declare and pay dividends to the stockholders in money, stock, or bonds: Ark. 5453.

If the directors of any corporation organized under this act shall declare and pay any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be (1) severally liable to a penalty: Mich. 3387.

(2) Jointly and severally liable for all the debts of the company then existing, and for all that shall thereafter be contracted, so long as they shall respectively remain in office. Provided, that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall within thirty days thereafter, if absent, file



a certificate of their absence or objection with the clerk of the company, and with the clerk of the county court of the county in which the principal office of said company is located, they shall be exempt from the said liability: Ark. 5438; Tex. 4133; Nev. 890.

(3) If a railroad corporation, without the authority of the legislature, increases its capital stock beyond the maximum fixed by law or in its charter; or declares a stock dividend; or divides the proceeds of the sale of stock among its stockholders; or issues certificates of stock of which the par value is not first paid in cash; the directors are liable to a penalty; and all certificates so issued are void; if a director files his dissent in writing with the clerk of the corporation, or is absent and does not vote therefor, he is not so liable: Mass. 112,61.

(4) No such corporation shall issue any stock, or declare any stock dividend, except as aforesaid, for any sum which shall exceed the net earnings of such corporation, and which shall have been actually and in good faith applied and invested in and for the purposes of the corporation: W.Va. 54,52.

(5) Every officer or director of a railroad company who shall violate or (see § 8604) consent to the violation of either of the two preceding articles shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness, as the case may be: Tex. 4156.

(6) The directors must not make nor declare dividends, except from the surplus profits arising from the business of the corporation; nor must they withdraw, divide, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided: N.M. 2637.

There may, however, be a division and distribution of the capital stock and property of the corporation which may remain after the payment of all its debts, upon the dissolution of the corporation, or the expiration of its term of existence: N.M. 2637.

For a violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the proceedings of the directors at the time, or who were not present when the same did happen, shall be, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations shall be a bar to any suit against such directors for any sums for which they are made liable by this section: N.M. 2637.

**§ 8635. Married Women. Absentees. etc.** Shares of stock held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a feme sole. All dividends payable upon any shares of stock held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it shall not be necessary for her husband to join in any receipt therefor; and any proxy or power given by a married woman touching any stock owned by her shall be valid and binding without the signature of her husband, the same as if she were unmarried: N.M. 2653.

When shares of stock are owned by persons residing out of the territory, the president, secretary, or directors of the corporation, before entering any transfer thereof on the books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and that his signature to the transfer is genuine, and, if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity: N.M. 2654.

**Art. 864. Bonds and Debt.**

§ 8640. **Borrowing Money.** (See also § 8534.) A railway<sup>a</sup> has power to borrow such sums as may be necessary for completing or operating the railway: N.Y. 1887,724,10; N.J. R.Rs. 108; Pa. R.Rs.<sup>a</sup> 8; Ind.<sup>b</sup> 3911; 1891,126; Ill. 114,20 & 35; Mich. 3352; Kan. 23,47; Neb. 1,16,117; W.Va. 54,50; N.C. 1957; Mo. 2543; Tex. 4219; Nev. 849; Col. 336; Ala. 1580; N.M. 2665(14); Ariz. 310.

For completing or constructing only: N.J. Suppl. R.Rs. 12; O. 3286; Minn. 2529; Ark. 5447(10); Cal. 5456; Ida. 2664; Wy. 549; Ariz. 319; La. D. 692.

For repairing: N.J.; Mo.; La. 1890,80.

For improving: Tex., Col., Ill., W.Va.

For making additions and extensions: Mo., La.

For connections with bridges or tunnels: Mo.

For equipment: N.J., Pa., Ill.,<sup>c</sup> Mich., Neb., Mo., Ark., Nev., Col., Wy., N.M., Ariz., La.; or to purchase property: N.M. 2700; La.

"As the board of directors shall deem necessary and expedient:" Wis. 1828; Dak. 1879,46,9; Oka. 1036; Ga. 1689(i); Fla. 39,10. So the purpose of the loan is not prescribed: Ct. 3570; Md. 23,171; Tenn. 1251; Ark.<sup>d</sup> 5488; Mon. G.L. 691. "For any purpose that may be needed in its business:" O. 3287; Md.; Neb. 1,16,84. In order "to settle with its dissenting stockholders:" N.H. 156,40.

Not exceeding the amount of stock (1) subscribed: Pa., O.

(2) Authorized: Md., Ark.,<sup>d</sup> Nev., Ida., Mon.

(3) Paid up: N.J.

And it may borrow "for no other purpose:" Mo., Ark.

Any railroad company of this state, the amount of whose mortgage indebtedness shall have been definitely fixed by special law, shall have power, notwithstanding any such limitation, to borrow such sum or sums of money, from time to time, as shall be necessary to pay off or retire its existing or maturing mortgage indebtedness, to lay an additional track where its railroad is now composed of a single track and sidings, or to otherwise improve its railroad, and furnish engines and other equipment for the uses and objects of said company, and to secure the repayment thereof by the execution, negotiation, and sale of any bond or bonds secured by mortgage on the railroad, lands, privileges, franchises, and appurtenances of and belonging to the said company; provided, that the whole mortgage indebtedness of any such company shall not at any time exceed the amount of its capital stock; and provided, that the bonds issued under any such mortgage shall not bear a greater rate of interest than six per centum per annum; and provided, further, that before any such mortgage shall be executed the consent of two thirds in value of the stockholders of such company shall first be obtained: N.J. 1887,29.

Railroads authorized to lease their road are given additional power to borrow money and issue bonds sufficient to cover its indebtedness and complete and equip the road, and exchange such bonds for other bonds or debts; but such bonds shall not bear a greater rate of interest than five per cent, or four per cent if guaranteed principal and interest by the leasing company: N.J. Suppl. R.Rs. 94.

No company can borrow money until all its capital stock is paid up and expended or appropriated, unless expressly authorized by its charter. But the directors may borrow an amount not exceeding that part of the stock which is unsubscribed, and issue certificates therefor convertible into stock: Va. 1232.

NOTES. — <sup>a</sup> "The president and directors:" Pa. <sup>b</sup> The statute applies to corporations other than railroad: Ind. <sup>c</sup> Only as to railroads organized before 1872. <sup>d</sup> But under this statute a majority vote of the stock must be had, etc.

§ 8641. **Bonds. (A) When may be Issued.** A railroad may issue bonds for any money borrowed: Ct.; N.Y.; N.J.; Pa.; O.; Ind.; Ill.; Mich.; Wis. 1828; Minn.; Kan.; Neb.; Md.; W.Va.; N.C.; Tenn.; Mo.; Ark.; Tex.; Cal.; Nev.; Col.; Ida.; Mon.; Wy.; Ga.; Ala.; N.M.; Ariz.; La. 1890,80.

Or promissory notes: Vt., O., Ind., Md., Cal., Nev., Ida., Ala., N.M., Ariz.

Or bills of credit or indebtedness and preferred stock: W.Va.

A railroad may issue bonds, etc., to provide means (1) for funding its floating debt: Mass. 112,62; Mo. 2543.

(2) Or for the payment of money borrowed for any lawful purposes (see § 8670): Mass. 112,62; Pa. R.Rs. 8; Mich. 3352; Tenn. 1251; Cal.; Ida. 2664; Wy.; N.M.

(3) To obtain money to build or furnish its road or repay debts contracted for that purpose: Me. 51,56; Pa.; Io. 1283; Neb.; La.; Ariz.

(4) To raise money to extinguish any debt or liability of the company: Vt. 3350.

(5) To retire any bonds already outstanding: Minn. So doubtless in other states.

(6) No purpose is prescribed: Vt. 1890,22; Tenn. 1276; Ark. 5453, 5488; Mon. G.L. 706; Uta. 2368; S.C. 1885,96,3.

(7) And for the purchase of railroads and other property within the purposes of the corporation: Cal. 5456.

(8) Any railroad company authorized to build a branch or diverging line may mortgage such branch or line, the income thereof, and franchise, and issue bonds therefor not to exceed fifteen thousand dollars per mile, and such mortgage must be recorded in the counties through which such branch runs; and shall not operate against the lien of laborers and material men for construction: Pa. R.Rs. 129.

"Secured in such manner as it deems expedient:" Me. See § 8642.

A narrow gauge railroad, not exceeding fifty miles in length, with stock not exceeding five hundred thousand dollars, may borrow money not exceeding the capital stock thus subscribed, and issue bonds therefor, not to exceed double the amount of stock paid up, the proceeds whereof shall be actually expended in the construction and equipment of their road: the bonds to be payable not over fifty years from date, with interest not exceeding seven per cent; and may secure such bonds by mortgage: Pa. R.Rs. 43.

A company may issue bonds, convertible or otherwise, bearing a rate of interest not exceeding seven per centum per annum, to an amount not exceeding two thirds of its capital stock actually subscribed, for one or more of the following purposes: completing or extending its road, constructing branch roads, laying double or additional track, increasing its machinery or rolling stock, building depots or shops, making improvements, paying its unfunded debts, or redeeming its bonds; and it may secure the bonds issued for such purposes by mortgage on its property, or otherwise, if authorized by the vote, in person or by proxy, of holders of a majority of the stock upon which all the instalments called for by the board of directors have been paid; but such vote shall be taken at a meeting of stockholders, of which thirty days' notice shall be given: O. 3286.

(9) Any railroad company now or hereafter organized under the laws of this state, and any such company which now is or shall hereafter be consolidated with other companies, may, at a meeting of its stockholders called as provided in cases of increase of stock, in lieu of issuing preferred stock, provide for borrowing money to locate, construct, and equip its proposed line of railway, or for the purpose of leasing or purchasing and equipping branch or connecting roads, constructed or in process of construction, not exceeding ten miles in length, or for redeeming or exchanging any part or all of its pre-

viously issued bonds, or for funding its floating debt, or for any or all of said purposes, in such an amount as it may deem necessary, not exceeding its authorized capital stock, and at such rates of interest as may be agreed upon between the respective parties, not exceeding seven per cent per annum, payable semiannually or quarterly as they may direct, and may execute and issue securities therefor, and to secure the payment thereof may pledge the entire property and net income of such company by mortgage or otherwise; and any railroad company formed by the consolidation of a railroad company or companies, created by or existing under the laws of this state and any other state or states, with a railroad company or companies of this state or any other state, may from time to time, if authorized by the vote in person or proxy of holders of two thirds of the full paid up stock of such consolidated railroad company present and voting at meetings of stockholders, called as aforesaid, issue its bonds, convertible or otherwise into stock, bearing a rate of interest not exceeding six per centum per annum, for one or more of the following purposes: paying, redeeming, or funding debts or obligations assumed, incurred, or created by it or either of its predecessors or constituent companies, compromising claims made against it or either of its predecessors or constituent companies, purchasing the whole or any part of any railroad held by it under lease to or operating contract with it or either of its predecessors or constituent companies; acquiring the whole or any part of the stock or bonds of any railroad company owning a railroad held by such consolidated railroad company under lease or operating contract; acquiring the whole or any part of the bonds, notes, or other obligations of any other railroad company of this or any other state, the whole or a majority of whose capital stock shall be held by such consolidated railroad company; completing, extending, improving, maintaining, or operating its road, branches, or lines held under lease or contract; laying double or additional track, purchasing rolling stock, building depots, elevators, or shops; and generally for any purpose needed in its business; and may, if the directors shall so determine, secure such issue or issues of bonds by mortgage or pledge of any or all of its real or personal estate or franchises or income. Said securities may be expressed in dollars or in the currency of the country where disposed of, and may be disposed of upon such terms and at such prices as may be agreed upon between the respective parties not inconsistent with the laws of this state. The proceeds of sale of such securities shall be applied only as now required by law: O. 1890, pp. 181, 182.

(10) Any railroad company which owns, has possession of, and is operating a railroad constructed and equipped, and whose railroad and railroad property and franchises are not mortgaged, shall have the right to issue bonds and to mortgage its corporate property and franchises to secure the payment of the said bonds, and may issue such bonds, and dispose of the same in such manner as shall be determined upon a vote of the owners of the entire capital stock of the said company at a meeting duly called for that purpose: Mich. 1891, 86, 1.

(11) Railroads existing under the laws of this state may issue bonds and secure them by mortgage, or issue income bonds and such guaranteed preferred or common stock as may be determined upon by the stockholders upon three fourths vote at a regular or special meeting with notice by publication: Tenn. 1277.

(B) **Form.** Such bonds shall be issued in sums of not less than (1) one hundred dollars each: Mass. 112, 62; Me.; Ct.; Vt.; O.; Md.; Mon. (2) Fifty dollars: Io. (3) Five hundred dollars: Minn., Neb., Ark., Cal., Ida., N.M., Ariz. (4) One thousand dollars: Wyo., Nev., Ida. In other states no amount is prescribed.

Payable at periods not exceeding fifty years from the date thereof: Mass. 1887, 191; Pa. R.Rs. 8. One hundred years: Vt.

And bearing interest not exceeding seven per cent a year: Mass., Pa., O., Ark.

Six per cent: Vt. Ten per cent: Mich., Io., Minn., Neb., Cal., Ida., Wyo., N.M., Ariz.

At a rate of interest to be agreed upon by the respective parties : Md., Mon., Dak., La., Oka.

Not to exceed fifteen per cent : Nev.

In other states there is no limit on the rate of interest : Me., Wis., Mon., Uta, S.C. See below ; and Vol. I., Art. 483.

It may not exceed the legal rate : Ind. ; Tenn. 1276.

They may be coupon or registered : Mass. 112,63 ; W.Va. 54,82b.

They must be recorded by the treasurer in books to be kept in his office : Mass. 112,62.

They must be signed by the president, and countersigned by the treasurer : Ct.

At the request of any owner or holder, railroads may issue registered bonds in exchange for coupon bonds, under such regulations as the directors prescribe, and with the consent and approval of the trustees of the corporation : Mass. 112,63.

Such exchange does not affect the security or pledged terms of the mortgage : Mass. 112,63.

If payable to bearer, they are declared negotiable by delivery : Minn., Neb.

Payable annually or semiannually : Mass. 112,62.

To bearer or otherwise : Io., Minn., Neb.

(C) **Amount.** Bonds can only be issued to an amount which, including all bonds previously issued (and all floating debt, Ct.), does not exceed in all the capital stock (1) actually paid in at the time : Mass. 112,62 ; Ct. 3434 ; N.J. Suppl. R.Rs. 12 ; Pa. R.Rs. 41 ; O. ; Md. ; Ida. ; Cal. ; Ariz.

(2) Authorized : N.M., Mo., Ark.

So, not more than double the stock paid in : Pa. R.Rs. 8.

One half the actual cost of construction as certified on oath by the president, the treasurer, and an engineer appointed by the commissioners : Ct. 3570.

It does not exceed \$150,000 per mile (see § 8523) : Pa. R.Rs. 6.

The proceeds must be actually expended in construction or equipment : Pa. R.Rs. 8.

No such corporation shall issue bonds, coupon notes, or other evidences of indebtedness payable at periods of more than twelve months from the date thereof, except as provided in this section : Mass. 112,62.

The bondholders, at a meeting called for the purpose, may elect new trustees of a mortgage to fill vacancies : Me. 51,85.

With appeal to the supreme court : Me.

No bond shall be issued unless approved by some person appointed by the corporation for that purpose, who shall certify that it is properly issued and recorded : Mass. 112,62.

But this restriction has in effect been repealed as to bonds issued before 1883 : Mass. 1883,7.

Provided further, that said bonds shall constitute a first lien on the railroad, its cars, real estate, and franchises, and the proceeds of said bonds shall be used for the purpose of aiding in the construction of said railroad ; N.J. R.Rs. 108 ; Suppl. 12.

That no railroad corporation of this commonwealth shall issue its corporate bonds, or other certificates of indebtedness, until after the full amount subscribed of its authorized capital stock shall have been fully paid for either in money, labor done, or property received ; nor shall it at any time issue such bonds or other certificates for an amount in excess of its capital stock as shown by its statement on file in the office of the secretary of the commonwealth to have been actually paid for, either in money, labor, or property received in accordance with the provisions of the seventh section of the sixteenth article of the constitution, and with the terms of this act ; nor shall it issue the same for less than their fair market value, or by any other device evade the true intent and meaning of this act ; and any stock or bonds or certificates of indebtedness hereafter issued in violation of the terms of this act shall be void : Pa. 1887,44,3.

It shall be lawful to determine the form of the bonds, the length of time they shall have to run, and the rate of interest they shall bear, not exceeding ten per cent; and also the form of the said mortgage or trust deed, and what provisions the same shall contain, and the trustee or trustees to whom the same shall be made, and the rights, powers, and duties of said trustee or trustees, and to make such provisions therein for the sale and transfer of the corporate property and franchises therein described as they shall deem best; and the sale and transfer of the said corporate property and franchises in accordance therewith shall be lawful and valid: Mich. 1891,86,2.

The principal and interest on said bonds, or either of them, may be made payable within or without this state: Neb. 1,16,117; Wy.

Any person or corporation formed under the laws of this state, or of any other state within the United States, that the directors of the railroad corporation may by unanimous concurrence select, may be trustees in such deed of trust: Cal. 5456.

Nor shall such corporation increase its bonded indebtedness except for the purposes and in the manner here provided: Mo. 2513.

Except that any railroad company may issue its bonds in excess of its capital stock for the purpose of constructing or acquiring another railroad, which shall connect with the railroad of the company issuing such bonds; but the bonds so issued in excess of its capital stock shall not exceed the authorized capital stock of the company whose road is constructed or acquired with the proceeds thereof, and shall be secured by mortgage on the railroad franchises and property constructed or acquired with the proceeds thereof, or by the deposit as collateral security of the first mortgage bonds of the railroad constructed or acquired with the proceeds thereof. But no such bonds shall be issued without first obtaining the consent of the persons holding the larger amount in value of the stock of the company issuing the same, at a meeting called for that purpose and of which meeting and the object and purpose thereof sixty days' public notice shall be given by advertisement in a daily or weekly newspaper published in the town or city in this state where the general offices of the company issuing such bonds may be located: Mo. 2499.

**(D) Vote for.** Bonds must be issued by vote of the stockholders at a meeting called for the purpose: Mass. 112,62; Vt.; W.Va. Or an annual one: W.Va.

"Under such regulations and restrictions as the directors by a two-thirds vote may impose:" Ariz. So, "by unanimous concurrence:" N.M.

So the rate must be approved by a majority vote: Tenn. 1276; Ark. 5488; Col. 336.

By a two-thirds vote: W.Va.; Nev.

Any director or officer of a railroad corporation who shall vote for, sign, or certify to any bond secured by mortgage or pledge of the corporate property without the issue thereof having been sanctioned by a majority in amount of its stockholders, who shall vote in person or by proxy thereon at a meeting called for that purpose in the manner provided in section nine of this act to consider an increase of capital stock, shall be deemed guilty of a misdemeanor: N.Y. 1887,724,10.

So, issuing bonds contrary to the provisions above is declared a misdemeanor: N.J. Suppl. R.Rs. 12.

The indebtedness of the corporation, evidenced by negotiable bonds, or bonds in any form, must not be increased, except at a meeting of the stockholders called for that purpose, of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four successive weeks in some newspaper published at the principal place of business of the corporation; and such increase can be made only by the vote at such meeting of the persons holding the larger amount in value of the capital stock: Ala. 1590.

**(E) Sale.** All bonds or notes issued by a railroad corporation shall be bind-

ing and collectible in law, although negotiated and sold by it or its agents at less than par: Mass. 112,65; Me.; Vt. 3351; N.J. Int. 6; Ind. 3911; Io.; Minn.; Neb.; Ark.; Wy.; Uta. (See also Vol. I., § 4813.)

So, the corporation may not plead the usury laws in defence to any bond or mortgage: Me.; N.J. Suppl. R.Rs. 12; Wis. 1841; Io.; Minn.; Neb.; Dak. 1879,46,20; Wy.; Oka. 1048.

So, it may sell bonds at such prices as it deems proper: Ind., Mich., Io., Minn., Neb., Ark., Wy., La.

No railroad corporation shall be exonerated from the payment of any bond or obligation, issued by the directors in pursuance of authority given at any legal meeting, by reason of any discount made to the purchaser thereof in accordance with the unanimous vote of the corporation; N.H. 157,4.

The directors of the company may sell, negotiate, mortgage, or pledge such bonds or notes, as well as any notes, bonds, scrip, or certificates for the payment of money or property which the company may have theretofore received or shall hereafter receive as donations, or in payment of subscriptions to the capital stock, or for other dues of the company, at such times and in such places, either within or without the state, and at such rates and for such prices (at not less than seventy-five cents on the dollar, O.), as, in the opinion of the directors, will best advance the interests of the company: O. 3290; Mich. 3352; Ark.; and if such notes or bonds are thus sold at a discount without fraud, the sale shall be as valid in every respect, and the securities as binding for the respective amounts thereof, as if they were sold at their par value: O., Ark.

And if such bonds, notes, or stock are thus sold at a discount, such sale shall be as valid and binding in every respect as if sold at their par value. And every such company is hereby authorized to confer upon the holder of any bond or note, sold or issued as aforesaid, the right to convert the principal thereof, at any time until paid, into the stock of such company: Ind. 3020.

**(F) Effect.** When coupons for interest issued with bonds are for a valuable consideration detached and assigned by delivery, the assignee may maintain assumpsit upon them in his own name against the corporation engaging to pay them: Me. 51,57.

All such contracts, bonds, notes, and mortgages, made in pursuance of the foregoing provisions, shall be as valid and binding upon the parties thereto as if the same had been originally embodied in the several acts incorporating such companies: *provided, however,* that this act shall not be so construed as to repeal, change, or modify any similar provisions contained in any act incorporating any railroad company, or any act amendatory thereof, or to restrict the provisions of any act of incorporation of any railroad company, or any act amendatory thereof, which has enlarged rights, grants, or privileges: Ind. 3021.

The provisions of this section do not apply to bonds or other securities issued or guaranteed by railroads of this state (see Art. 865) in aid of the construction and equipment of railways to the amount not exceeding sixteen thousand dollars per mile of single track, or eight thousand dollars per mile if narrow gauge: Io. 1884,22.

"All promissory notes, mortgages, and bonds heretofore executed by any railroad company for any of the parties mentioned in the preceding sections of this act are hereby ratified, confirmed, and made valid:" Ariz. 320.

For Land Grants, see § 8774.

**§ 8642. The Mortgage.** **(A)** A railroad may mortgage its property and franchise therefor: Mass. 112,62; Me. 51,56; Vt.: N.Y.; Ct.; N.J.; Pa.; O. 3288; Ind.; Ill.; Mich. 3351; Wis.; Io.; Kan.; Minn.; Neb.; Md.; W.Va.; N.C.;

Tenn.; Mo.; Ark.; Tex.; Cal.; Nev.; Col.; Dak.; Ida.; Mon.; Wy.; Uta.; S.C.; Ga.; Ala.; Fla.; La.; N.M.; Oka. For citations, see § 8640.

"Its road and any other property, including any interest in railroad property:" Vt., Ind., Wis., La.

"Its property and income:" O., Neb., Md., Ind., Mon.

Including both personal and real property: Mass., O., Mich., Wis., Neb., W.Va., Tenn., Tex., Nev., Mon., Wy., Ala., La. 1890,80.

And land grants: Neb., Wy. See also § 8774.

With such power of sale as is deemed expedient: Mich., Wis., Ga., Fla.

No railroad corporation which has previously issued bonds shall subsequently make or execute a mortgage upon its road, equipment, and franchise, or any of its property real or personal, without including in and securing by such mortgage all bonds previously issued, and all its pre-existing debts and liabilities: Mass. 112, 64; S.C. 1436.

(B) **Vote.** No mortgage by such corporation shall be valid unless authorized by a resolution adopted by a vote of two thirds of all the stock of such company, after notice, and in the manner provided in this title for increasing the capital stock of such corporations: Ill. 114,20 & 36; W.Va. 54,50; Tex. 4220.

So, of a majority: Vt., Col.

All borrowing is "under such restrictions as two thirds in interest of the stockholders may impose:" Nev. 849.

"As the directors shall impose:" Ida., Mon., N.M., Ariz.

"By a two-thirds vote:" Ariz.

(C) **Form.** A mortgage by a railroad company of its real and personal property, duly recorded as a mortgage of real estate, need not also be filed as a chattel mortgage: N.Y. 1868,779; N.J. R.Rs. 86; Mon.

It shall be held to be a sufficient record of any such mortgage, heretofore or hereafter made, if the same is recorded in the office of the recorder of deeds in each of the counties in which the real or personal property is situate or employed, and the mortgage so recorded shall be held to be a good and substantial lien, from the date of the record of the same in each county where it is recorded, as well upon the personal as the real property of the company: Vt. 3352; Ill. 114,20 & 38; O. 3289; Io. 1285; Minn. 2531; Neb. 1,16,120; Uta. 2371; Ga. 1689(i).

Or, it is sufficient if recorded with the secretary of state: Ill.; Wis. 1839; Minn. 2532; Tex. 4221; Dak. 1879,46,18; Mon. G. L. 706; Fla. 39,11; Oka. 1046.

In the parish where is the principal office of the company: La. D. 693,727.

(D) **Effect.** Mortgages of railroad franchises, furniture, cars, engines, and rolling stock, when properly executed and recorded, shall vest in the mortgagee a mortgage interest in and lien upon such property, without delivery or change of possession; and for the purpose of mortgage, all such property shall be deemed part of the realty: Vt. 3353; Ct. 3572; Io. 1285; Minn. 2531; Neb. 1,16,118, 120; 1887,30,30; Uta. 2371; Mon. G. L. 691; Fla. 39,30.

Said mortgages or deeds of trust may by their terms include and cover, not only the property of the corporation making them at the time of their date, but property both real and personal which may be thereafter acquired, and shall be as valid and effectual for that purpose as if the property were in possession at the time of the execution thereof: Io. 1284; Minn. 2530; Neb. 1,16,119; Uta. 2370; N.M. 2700; Fla.; La. D. 726.

So, it appears, in: Ark. 5453; Mon.

All rolling stock of any railroad corporation used and employed in connection with



its railroad, and all fuel necessary to the operation of the same, are declared and shall be held to be fixtures; and all such property and all additional rights of way, depot grounds, and other real property, acquired subsequently to the execution of any trust deed or mortgage which shall have been described or provided for therein, shall be subject to the lien thereof to the same extent as the property therein described which the corporation owned at the time of its execution: Wis. 1838; Dak. 1879,46,17; Fla. 39,30; Oka. 1045.

"The company may secure said bonds by a mortgage of its property, or any part thereof, by deed duly executed by its president, under the corporate seal, to the treasurer of the state and his successors in office, in trust for the holders of said bonds, and recorded in the office of the secretary of this state:" Ct. 3571.

But this section shall not prevent such furniture, cars, engines, and rolling stock from being attached by a person having a claim against the corporation owning such property for an injury sustained on its road, by negligence of the corporation, or for services rendered, or materials furnished to keep said road in repair or to run the same, or for liabilities as common carriers, or for the loss of property while in the possession of said corporation; and such property, when so attached, may be taken, held, and disposed of as though said property had not been mortgaged: Vt. 3353. And see § 8552.

Any trust deed or mortgage made upon the lands, roads, or other property of any such railroad company shall bind, and be a valid lien upon, all the property mentioned in such deed or mortgage, including rolling stock, machinery, and other personal property; and a purchaser at a foreclosure sale, or under a trust deed, shall have and enjoy all the rights of a purchaser at an execution sale: Uta. 2369.

All mortgages and trust deeds "heretofore" executed by railroads organized in the territory are declared valid: Uta. 2372.

**§ 8643. Sinking Fund, Conversion, etc.** The directors may at any time set apart money, not exceeding fifty per cent of the net earnings for one year after paying operating expenses and interest, as a sinking fund to pay off the indebtedness of such corporation; which sum so set apart shall be annually applied to that purpose, and the purchase and redemption of the outstanding evidences of indebtedness, as the directors deem most for its interest: Wis. 1840; Dak. 1879,46,19; Oka. 1047; Fla. 39,31.

The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity: Cal. 5457; Nev. 849; Ida. 2665; Ariz. 319.

"Such corporation shall also have power to establish sinking funds for the payment of its liabilities:" S.C. 1423.

And the directors of the company may confer on any holder of any bond, issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company at any time not less than two nor more than twelve years (not exceeding fifteen years, Ind.; ten years, Ill., Mich., N.C., Tex., W.Va., La.; within six years, Nev.; eight years, Cal., Ida., Ariz.) from the date of the bond, under such regulations as the directors may see fit to adopt<sup>a</sup>: N.Y. 1887,724,10; Ind. 3911; Ill. 114,20 & 35; Mich. 3352; W.Va.<sup>a</sup> 54,50; N.C. 1957; Tex.<sup>a</sup> 4222; Nev. 849; Cal. 5457; Ida. 2665; Ariz. 319; La. D. 693.

So, they may be convertible into stock: Io. 1283; Minn. 2529; Neb. 1,16,117; Wy.

"Provided that nothing in this act shall be so construed as to authorize an increase in the capital stock:" La.

NOTE. — <sup>a</sup> As are provided in the by-laws, in the noted states.

§ 8644. **Equipment Mortgages.** Whenever equipment or rolling stock is sold or leased on condition that the title shall remain in the vendor or lessor until performance or payment of the contract, such contract shall be invalid as to subsequent judgment creditors or purchasers for value without notice, unless evidenced by writing duly acknowledged and recorded (1) with mortgages of real estate in the county where is the principal office of such vendee or lessee; " and every locomotive or car so leased or sold must (except in Ohio and Illinois) have the vendor's or lessor's name plainly marked on both sides, followed by the word owner, lessor, etc.: Pa. R.Rs. 154; N.J. Suppl. R.Rs. 89; O. 3378a; Ind. 1889,176; Ill. 114,50-55; Wis. 1839a; Minn. 2552,2554; Ore. 4042; Col. 1885, p. 303; Del. V. 17,146; Ky. 90a,V; N.C. 2006; Tenn. 1885,96; Wash. (Hill's Codes) 1456-7; Mon. G. L. 709,710; Ga. 1889, p. 188; Miss. 1886,19; N.M. 1884,35; Oka. 1038.

(2) With the secretary of state: O., Wis., Minn., Ky., Tenn., Col., Del., Mon., Oka.

Such leases are declared valid; but this act applies only to leases by manufacturers to purchasers for an unrenovable term not exceeding four years: Ill.

The term of such lease may not exceed ten years: Ind., Wis., Minn., Del., Mon., Oka. Twenty-five years: Ky. 1890,304. Six years: Tenn.

In any written contract for the leasing or renting of railroad equipment or rolling stock, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rentals received may, as paid, or when paid in full, be applied and treated as purchase money: O. 3378b; Ind. 1889,176,2; Minn. 2553 amt.; Tenn.; Col.; Ore.; Wash.; Mon.; Oka. 1037; Ga.; Miss.

Such leases shall cease to be notice as against third persons after the expiration of the day the last payment thereunder, or other conditions thereof, shall become due, or to be performed by the terms thereof: provided, that the lessor, bailor, or conditional vendor shall, within ten days from the first of January in each year, file a sworn statement with the recorder of each county where the lease or sale bill provided for in section one of this act is recorded, and pay the recorder for putting the same on record, which statement shall show the names and dates and description of the said contract, and the amount due and unpaid thereon; and upon failure to make such statement, or if such statement is false or made with the intent to deceive and mislead any creditor of said railroad, in any way, then such lessor, bailor, or conditional vendor shall thereby lose all benefits which he or they would otherwise have under the provisions of this act, and any other person or creditor may treat the property described in such conditional contract for sale as though the sale had been unconditional, and not subject to any lien or purchase money whatever, and may levy execution or attachment thereon, or purchase the same, freed from any lien of such lessor, bailor, or conditional vendor: Ill. 114,55.

This act shall not apply to railway rolling stock leased in the ordinary way without condition regarding purchase and sale, nor shall it affect the legality of any instrument of sale or lease existing at the time of the passing of this act: Ill. 114,54.

The provisions of the act to which this is a supplement shall apply to mortgages created or to be created upon the locomotive engines and cars of railroad corporations, and other personal property held by them for the purpose of operating the railroads belonging to them; and it shall be lawful for the mortgagors to retain the use and possession of said mortgaged property without impairing the lien of said mortgage: provided that such mortgage shall not be valid against persons not parties thereto, unless recorded, as is now required by law in the case of mortgages of real estate, in every county in which the mortgaged property is situated; and provided further, that all cars and engines mortgaged under the provisions of this act shall be marked in some conspicuous place with the name of the trustee in said mortgage: Pa. R.Rs. 42.

These provisions apply generally to contracts made with railways or any other corporation renting railroad equipment: O. 3378d.

NOTE. — "In every county through which it runs: Col., Ind., Ill.

### Art. 865. Public Aid.

§ 8650. **When Allowed.** (A) Any city " or town (within which a railroad is located or terminates,<sup>b</sup> Mass., Ind., Tenn.; or any county, Ind., Wis., N.C., Tenn., N.M.; or any village, Wis.) may vote to aid, subscribe for and hold shares of stock or securities of, such corporation to an amount not exceeding for the aggregate in all such corporations two per cent (five per cent, Me., Io., Minn., N.M.; ten per cent, Tenn., N.C.; eight times the "grand list," Vt.; there is no limit save that imposed by the tax provided therefor, see § 8654 below, Wis., N.C., Miss.) of its valuation (or any such city or town having a valuation not exceeding three millions to an additional amount not exceeding one per cent of the valuation, Mass.), provided (1) that two thirds of the legal voters so vote at a special election: Mass.<sup>a</sup> 112,46; Me. 51,135; Miss.<sup>c</sup> 1882,27.

(2) A majority vote is sufficient: Vt. 2760; Ind. 4045,4056,4057; 1889,52; Wis. 942,943; Io. 1884,159; N.C. 1997; N.M. 2709,2710.

(3) But it must be ratified (i. e. signed, see § 8652) by a majority of the taxpayers both in number and amount: Vt. 2764.

(4) A three-fourths vote is required: Tenn. 1887,3,1 & 9.

(B) It is provided by United States laws that the legislative assembly of any territory shall not authorize the issuing any bond, scrip, or evidence of debt by the territory, or any county, city, town, or township therein, for the construction of any railroad: U.S. 1889-1,182,7.

Consequently the laws of New Mexico above cited are invalid; and §§ 2709-2712 N.M. Comp. Stats., is expressly repealed: N.M. 1889,15.

"Nothing in this chapter shall be construed to make the territory, or any municipality therein, responsible for any debts or obligations of any character which may be contracted by any such corporations:" Mon. G. L. 696.

Such aid may be extended (1) by mere donation: Ind. 4058; W.Va. 54,58.

(2) Or by taking stock: Mass., Me., Vt., Ind., N.C., Tenn. *ib.* 12. Or bonds: Mass.

(3) By issuing town, etc. bonds to the road: Vt., Kan., W.Va., N.C., Tenn., Nev. 911.

**Law of States in Detail.** A majority of the property tax-payers of any municipal corporation in number and amount, including solvent corporations, may petition the county or supreme court judge, who hears proof after public notice, and if he so determine that petitioners represent such majority, he appoints commissioners to execute the bonds of such municipal corporation, running thirty years or less, at seven per cent, not exceeding in all twenty per cent of the valuation. Savings banks may invest not exceeding ten per cent of their deposits in such bonds. The taxes on such railroad are paid over to the county treasurer to form a sinking fund for such bonds. And such commissioners may also subscribe to the stock of such railroad to an amount equal to such bonds, and pay for the same with the bonds at par; or they may sell such bonds, and invest the proceeds in stock or bonds of the railroad: N.Y. 1869,907,1-6; 1872,883.

And such city or town, by vote as above, may become an associate, as in [§ 8520], in the formation of such railroad corporation, with all the powers and privileges of an individual associate: Mass. 112,47.

Provision is made for counties, cities, and townships in counties bordering on the state line, wishing to subscribe to the stock or aid in the construction of any railroad opposite such county and in any other state, to do so by majority vote of the citizens : Ind. 4077 *et seq.*

Any incorporated city, under this act, shall have power to borrow money to subscribe to the stock of any plank road, macadamized road, or railroad running into or through such city, or to any bridge company organized under the laws of this or any state to construct a bridge across any river or watercourse within or bordering on this state, where such bridge has its termini or either terminus within such city, or to public improvements or public works, . . . to make donations in money or bonds of such city to aid in construction of such works only on petition of a majority of the resident freeholders thereof: provided that said donations shall not be payable either in money or bonds until the roads or bridges or public improvements or public works, in aid of which it is given, shall be so far completed as to admit the running of trains from the point of commencement to such point or points as are designated in the petition in case of a railroad or railroad bridges, or the passage of wagons in the case of other roads or bridges, and in case of public improvements or public works upon the completion thereof. And for any debt created in pursuance of the provisions of this section, in carrying out the intentions of the petitioners aforesaid, the common council shall add to the duplicate of each year thereafter a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the one hundred dollars to create a sinking fund for the liquidation of the principal thereof, which fund, with all the increase thereof, shall be applied to the payment of such debt, and to no other purpose : Ind. 3152.

There is no provision in Illinois for further aid to railroads by counties, cities, and towns. The statutes in force only applying to the renewal, etc. of bonds already issued : Ill. Ch. 113.

Provision is made for issuing new bonds in lieu of old bonds of any city, town, or county issued in aid of a railroad upon general or special election by majority vote : Ill. 113,1 & 3 ; 1865, Feb. 16.

New bonds may be issued in place of old railway bonds upon such time, not exceeding twenty years, and drawing interest not exceeding ten per cent, as may be agreed upon for holders, if authorized by a majority vote of the county, town, etc. : but not to increase the aggregate indebtedness of such municipal corporation beyond five per cent on the valuation therein : Ill. 113,28 ; 1872, Mar. 26.

Counties, towns, cities, and villages are authorized to grant railway aid in the manner herein provided : Wis. 942 ; Minn. 2611 ; La. D. 711.

No such bonds must be issued to an amount exceeding five per cent upon the valuation of such village, city, or town : Minn.

Such aid is granted by bonds of the municipalities, in consideration of which it may receive the same amount in stock of the railroad at its par value : Minn. 2612.

A county, town, city, or village may subscribe cash to the capital stock of a railroad, payable in instalments not exceeding three years, in lieu of issuing such bonds : Minn. 2618.

All bonds or other evidences of debt hereafter issued by any corporation to any railway company as capital stock shall be null and void, and no assignment of the same shall give them any validity : Io. 554.

Whenever it shall be proposed in the petition and notice calling said election to issue first mortgage bonds, not exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge, and not exceeding the sum of eighteen thousand five hundred dollars per mile for the ordinary four feet eight and one-half inch gauge, in lieu of stock as herein provided, it shall be lawful to issue said bonds of the denomination of one hundred dollars in the same manner as is provided for the issue of stock,

and in such case the petition and notice shall state the amount of bonds per mile to be issued, the rate of interest, and the time of payment of the interest and principal of said bonds: Io. 1884,159,6 ; 1890,19.

Taxes not to exceed five per cent on the valuation may be voted to aid any railroad incorporated under the state laws upon petition to the town or city authorities, signed by a majority of the resident freehold tax-payers, and a majority vote at a special election: Io. 1884,159,2.

Such tax may be paid in one or two years: Io. ib. 3.

It is lawful for towns or cities to procure and donate to railways, in operation or construction in such town or city, sufficient land for depots and shops, upon petition of (1) a majority of the resident freehold tax-payers, and two-thirds vote at a special election held thereupon: Io. 1882,133.

(2) Of two fifths, and a majority vote: Kan. 23,149.

In Kansas there is a statute enabling counties, townships, or cities to make aid to railroads with a majority vote at an election to be held upon petition of two fifths of the resident tax-payers; provided that no county shall issue under this act more than one hundred thousand dollars and an additional five per cent on the value, and no township more than fifteen thousand dollars and such additional five per cent, and total amount not to exceed four thousand dollars per mile on the railroad constructed in the county; provided that any subsequent election to be held for the same purpose must be upon petition of a majority of the legal voters: Kan. 23,126.

Such aid is made under this act by an issue of municipal bonds, with provisions for special levy of taxes and sinking fund sufficient to pay the bonds at maturity, the county, etc. receiving therefor first-mortgage bonds on the railroad equal in amount, less twenty per cent, to the municipal bonds exchanged therefor. Interest payable annually after a date not more than three years from the date of the railroad bonds. The principal of such municipal bonds to be made payable at a time not exceeding thirty years at a fiscal agency of the state of Kansas in New York: Kan. 23,132,133, 136,140,141.

The county court of any county, or counsel of any city or town, may make an order for an election for the subscription to the stock of any internal improvement company, stating the maximum amount proposed to be subscribed, not to exceed one fifth of the total stock of said company, or an amount requiring the imposition of an annual tax exceeding twenty cents on one hundred dollars; and if upon such election a three-fifths vote is in favor of such subscription, and the majority of the freeholders and registered voters of the county, etc. is included in such three fifths, the subscription is made; and the board of supervisors or council may negotiate a loan or issue bonds to secure the payment of the same in the name of said county, city, or town: Va. 1243,1248.

In West Virginia, subscriptions to the capital stock of a railroad may be made by any county, city, town, village, or district in the county through or near which the railroad is located, upon a three-fifths vote at a special or general election ordered by the county court: W.Va. 54,57; 39,24.

Such subscription may be in cash or the coupon bonds of such county, etc., bearing interest at not exceeding six per cent, and redeemable in not more than thirty-four years, which bonds shall be received by the railroad at par: W.Va. 54,58.

Any county, town, or city may subscribe for stock in, or loan its credit to, any railroad running to the same, or contiguous thereto, to an amount in the aggregate not exceeding one tenth of its taxable property, upon the consent of a majority of the justices of the peace, or the mayor and aldermen of the city or town, and the approbation of the legal voters at an election ordered by the county court or corporate authorities upon application of the railroad, the entire line having been first surveyed, located, and estimated, and three fourths at such election must be in favor of the subscription: Tenn. 1278-1287.

In Arkansas, there are provisions by which the owners of lands forfeited for taxes may give the same in aid of railroads, the lien of the state for taxes continuing to exist : Ark. 5489-96 ; but this provision seems to be repealed : Ark. 1887,102.

Any person may give lands or other property to aid in the construction of the railroad to the state, to be held by it for that purpose, and may designate the railroad, and will be entitled to reversion if it be not completed within the time fixed : Ark. 5485-6.

In Nevada, there is a special act applying to Lincoln county only : Nev. 1887,2.

In Wyoming, any county may issue its bonds, to an amount not exceeding five per cent of its taxable property, to aid in the construction of railways whose proposed line shall be generally in a north and south direction only, but in no case to exceed five thousand dollars per mile of road in said county ; bonds to run from fifteen to thirty years, at interest not over six per cent ; a special election to be held upon petition of the railway and fifty qualified voters of the county ; no bonds to be issued until one fifth of the line in such county is completed ; the railway to file a bond for completion of the whole line : Wy. 555-560.

In Florida, the general laws contain a chapter entitled Internal Improvements : Fla. Ch. 124.

This chapter provides that the lands granted to the state for internal improvement purposes and swamp lands and the proceeds thereof shall be set apart to form a fund, the trustees of which may receive the bonds of any railroad in exchange therefor. Such road to be constructed in certain specified locations, and upon many specified conditions. There is also a state land grant of alternate sections on each side for six miles to railroads constructed on such lands : Fla. 124,18.

The capital stock of companies constructed under this act is made exempt from taxation, and the roads and their property, including rolling stock, are exempted from taxation for thirty-five years from their completion, and the officers thereof are made exempt from militia and jury duty : Fla. 124,21.

Counties are authorized to subscribe to the stock upon such railroad upon majority vote of the legal voters ; such county subscription not to exceed fifty per cent of the cost of construction through such county ; and bonds of such county, city, or town may be issued therefor, and a tax must be collected for interest and sinking fund, the rate of interest not to exceed ten per cent : Fla. 124,24.

Elaborate provision is made for such subscription to one fifth of the stock of a railroad by the state : La. D. 715-724.

NOTES. — <sup>a</sup> Having less than 30,000 population in 1870 : Mass. <sup>b</sup> Or which runs within one mile of such city or town : Tenn. ib. 2. <sup>c</sup> The law only applies to a few counties.

**§ 8651. Of the Process and Election.** Such aid must be granted (1) upon application of the company making a definite proposition in writing stating (*a*) the amount of bonds desired, the time when payable, the rate of interest, and the time when they are to be delivered ; and thereupon a special election is held, at which there must be a majority vote (or, in a county, there must also be a majority of votes at a majority of the election precincts, Minn.) : Minn. 2612-2614 : Kan. 23,129-132.

(2) The proposed termini, the amount asked for, the time when the road will be constructed, accompanied by a map : Tenn. 1887,3,3.

(2) The selectmen, upon application of ten voters, order a special election in from twelve to twenty days after posting notices : Vt. 2761.

(3) The county commissioners order a special election of the county : N.C. 1997-8.

Whenever any such railroad company shall desire a subscription to its stock or bonds, or both, it shall deliver to the clerk of the county, town, village, or city from which such aid is desired a definite proposition in writing, signed by the president and secretary thereof, and sealed with its seal, which shall be, if accepted, irrevocably bind-

ing on such company, and which shall contain a statement of the manner in which it is desired that such subscription shall be made payable; and if to be payable in bonds, then of the amount of bonds desired, the time when payable, and whether payable before maturity at the option of such municipality, rate of interest they shall bear, and how, when, and where payable, and also specifying when said bonds shall be delivered with reference to the time of the complete construction of such railroad from point to point, and within what time such road shall be so constructed as to be entitled to such aid or such bonds, or any instalment thereof; and also that in consideration thereof such railroad company will issue to such municipality such number of the shares of its capital stock or such of its mortgage bonds, or partly of the one and partly of the other, as will at their par value be equal to the principal sum of such bonds; and may propose that such bonds of the municipality, and such stock or bonds, or both, of such company, shall be deposited in escrow with some trustee or trustees to be named, to be delivered to the proper parties when and as the conditions of such agreement shall be complied with by the party entitled to the same thereunder: Wis. 945.

The proposition may be accepted in either of the two following modes: either by the railroad presenting a petition to the resident tax-payers, and obtaining the signature of a majority of the same within four months, or by vote of the county, etc., upon request of twelve resident freeholders in the same manner as at a general election; but the railroad may not proceed in the latter way if it has given notice of the presentment of a petition according to the method first provided: Wis. 946.

Any county, town, village, or city may make a subscription to the capital stock or bonds of a railroad, to be paid in money, lands, or other property, instead of by the issue of bonds, upon a proposition made by the railroad company, and accepted in one of the modes above provided. Such subscription shall be paid in instalments not exceeding three years from the completion of the contract, and the last instalment not until the railroad has been completed ready for passage of cars to the place to which it was agreed to be built in consideration of such aid. Taxes shall be levied sufficient to pay such instalments, and the amount of said subscription may not exceed a sum exceeding five per centum on the assessed valuation when added to existing indebtedness: Wis. 949.

If any county, town, city, or village shall issue and deliver to any railroad company any bonds in pursuance of the provisions of this act, it shall not thereafter issue or deliver any bonds, or incur any liability, in aid of the construction of the railroad of such company, by virtue of the authority of any other law of this state: Minn. 2624.

In Tennessee there is an alternative method of obtaining county aid, etc. in the Code, which provides that any county, town, or city may subscribe for stock in or loan its credit to any railroad running to the same, or contiguous thereto, to an amount not exceeding one tenth of its taxable property, upon a three-fourths vote of the legal voters at an election ordered with consent of a majority of the justices of the peace of the county or the mayor and aldermen of the city. The entire line to be surveyed before application. A subsequent election may be held at any time within thirty days. A special levy of tax must be made, but not more than one third of the stock subscribed can be collected in any one year; and tax certificates are given to the tax-payers, which are receivable in payment of freight or passage on the railroad after one year from its completion, and are also exchangeable for capital stock in the railroad company: Tenn. 1278-1297.

Should any county, town, or city fail to vote the subscription, it may, at any time after thirty days, order another election, if desired by the railroad company: Tenn. 1887, 3, 10.

In such petition (by a majority of the taxable property) the amount of property therein owned by any railroad company shall be excluded in ascertaining the total amount of taxable property in such county: Nev. 911.

**The form of the vote** upon this question shall be determined in cities by a concurrent vote of both branches of the city council, and in towns by the selectmen; and the mayor and aldermen or selectmen shall select some person to vote on the stock so subscribed for: Mass. 112,48.

The form is merely "Yes" and "No": Me. 51,137.

"For taxation:" Io.

"For and against the railroad appropriation:" Ind. 4050; Minn. 2614; Tenn.

All ordinances passed for such subscriptions shall contain the following provisions, to wit: first, a statement of the number and amount of shares proposed to be subscribed; second, the levy of a tax on the landed estate situated in the parish or municipal corporation sufficient to pay the amount of the subscription, and specifying the rate of taxation and the time when it shall be payable: La. D. 712.

No ordinance shall be valid or take effect until it shall have been approved and ratified by a majority of the voters on whose property the tax is proposed to be levied, at an election to be held specially for that purpose: La. D. 713.

The election expenses, if in favor of the appropriation, shall be charged against the railroad, and deducted out of the first moneys collected by virtue of the appropriation: Ind. 4063.

They must be paid by the railroad in any event: Kan. 23,128.

Whenever a city or town has voted at any legal meeting thereof upon any question of loaning its credit to, or taking stock in, or in any way aiding any person or corporation, said city or town shall not vote again upon the same subject except at its annual meetings: Me. 51,138.

If the ordinance be rejected by a majority of the voters, it shall be lawful at any subsequent period, at intervals of not less than six months, again to take the sense of the voters in the same manner: La. D. 713.

**§ 8652. Of the Bonds or Stock so issued.** The town meeting shall vote the amount and terms, and appoint three commissioners who, or the selectmen, shall obtain the signatures of the tax-payers in a book, and a majority in number and value must assent within a year: Vt. 2762-4.

The bonds issued by the town, etc. shall not bear interest over seven per cent: Vt. 2766. Not over eight per cent: N.C. 1999. Not over six per cent: Tenn. ib. 13.

If the town vote to subscribe for stock, such subscription may be made before the filing of the articles, and form a portion of the amount required (§ 8524) to be subscribed before such filing: Vt. 2768.

The bonds of the county, etc. shall not be issued payable after a period of twenty years: Wis. 943; Tenn. ib. 12.

No county or township which has become the owner of any stock shall in any case be liable for work or materials furnished the railroad, though the assets of the company be exhausted: Ind. 4064.

Where stock has been taken by counties or townships, and paid for from taxes herein provided, the tax-payers may request the treasurer to issue to them certificates for the amount of railroad taxes paid by them, which certificates shall be assignable in writing, and may be exchanged for stock of the company of its par value; and no personal liability attaches to the original holder thereof for any debt contracted by the railroad company. Unclaimed stock is issued to the several townships in the county in proportion to the number of children, to be used for the school fund: Ind. 4070-1073.

But if such municipality shall have voted for such railroad proposition, and shall have subscribed for such stock or bonds of such company, and in reliance thereon such company shall have faithfully performed its agreement, no defects or irregularities in any of the proceedings preliminary to such election shall invalidate such agreement, or release such municipality or any officer thereof from the obligation and duty to carry out the same: Wis. 948.



Before any railroad company shall be entitled to receive any bonds issued in pursuance of the foregoing provisions for the stock of such company, said company shall deliver to the treasurer of such county, township, or city stock in their said road equal in amount with the bonds authorized to be issued, dollar for dollar: Kan. 23,135.

All bonds hereafter issued by boards of county commissioners, township boards, or by the authorities of incorporated cities to railroad corporations shall be redeemable at the pleasure of the board of county commissioners, or authorities issuing the same, at any time after ten years from the date of their issue: Kan. 23,155.

**Sale.** Any county, city, or town subscribing for capital stock may sell such stock as they deem best, upon two-thirds vote of the legal voters at some general or special election: Kan. 23,144.

May sell such stock or bonds only upon the order of the county judge upon petition of a majority of the tax-payers in number and amount: N.Y. 1869,907,5.

The municipal board or council may sell such stock at any time: Wis. 954.

The proceeds are applied to the sinking fund (§ 8654): N.Y.

The mortgage bond of any railroad company executed in favor of any county, township, or city, in pursuance of the provisions of this act, may be sold, assigned, or discharged by the proper authorities of such county, township, or city: provided, that such railroad company or other party, in consideration therefor, shall first deliver to the authorities aforesaid the bonds of such county, township, or city, as the case may be, equal in amount, dollar for dollar, with the mortgage bonds so sold, assigned, or discharged; but in no event shall such county, township, or city authorities be held liable as guarantors or assignors of any such first mortgage bonds so sold, assigned, or discharged: Kan. 23,139.

The bonds issued by any county, city, or town, subscribed to an internal improvement company, shall be received by such company at their par value: Va. 1248.

Hereafter, before it shall be lawful for any county judge or other person whose duty it is to issue the bonds of any county, city, town, or precinct in payment of any stock subscribed by any county, city, town, or precinct in aid of any railroad company, turnpike road company, or other public improvement, the person or company to whom such bonds are to be delivered or money paid shall enter into a covenant, with good, solvent, and sufficient securities, payable to the Commonwealth of Kentucky, for the use of such county, city, town, or precinct, and conditioned that said bonds or money so issued and delivered shall be faithfully and honestly applied to the object for which the same was originally subscribed, and for which said bonds were issued or said money or appropriation voted; and it shall be the duty of said company, on or before the first day of January in each year, after the commencement of the construction of the enterprise to which such subscription was made, to furnish to the county court of any county and the authorities of any city or town making said subscription a balance sheet, showing the receipts and disbursements of said company of said county or city subscription, and how disbursed, during the preceding year: Ky. p. 1215, § 1.

**Voting.** When a city or town holds stock in a railroad, the municipal officers thereof, or an agent appointed by them in writing, may vote thereon at any meeting of the corporation: Me. 51,139; N.Y. 1869,907,5; Ind. 4075; Minn. 2621; Wis. 954; Kan. 23,54; W.Va. 54,60; Va. 1251; Tenn. ib. 15.

The stock subscribed shall not belong to nor be administered by the parish or municipal corporation by which the subscription shall be made, but shall belong to the tax-payers who shall have paid therefor; and the tax receipt of each tax-payer shall entitle him to a certificate, transferable by delivery, from the corporation to which subscription has been made, for an amount equal to the amount of his tax paid: La. D. 714.

Whenever any city or town in the state, in its corporate capacity, holds one fifth or more of the shares in the capital stock of any railroad incorporated by the legislature.

any citizen thereof, being a freeholder and resident therein, is eligible as a director of such railroad company : Me. 51,140.

Railroads must give to all counties, townships, cities, and towns collectively, which have voted such aid, a representation in the board of directors of one fourth of the number of such board, until the railway has been completed and all conditions of the subscription have been complied with by the railroad : and thereafter said counties, etc. shall be represented only in the same manner as other stockholders ; and the governor of the state is authorized to appoint the directors provided to represent such counties, etc. : Ill. 113,18.

§ 8653. **Limitation of Time for Building.** Such subscription is void (1) unless actually and fairly paid, or some proceeding is begun by the corporation to enforce payment, within twelve months from such vote, and at least twenty per cent of the stock of the corporation is actually paid in cash, and ten per cent actually expended in construction : Mass. 112,49.

(2) If the railroad fail to comply with its agreement, or forfeits its charter : W.Va. 54,57.

(3) Unless that part within the county, etc. is completed as agreed ; or the county may stipulate for a further distance, or completion to certain points, before it shall be payable : Tenn. ib. 11.

No donation of money shall be made by the board of county commissioners until the railroad has been permanently located and work done thereon equal to the amount of the donation ; nor shall more than fifty per cent of the money voted be donated and paid over until the iron is laid and a train of cars shall pass over the entire length of the road in such county or township : Ind. 4060.

After the money so appropriated has been levied and the subscription made, the railroad, when it has fully constructed its line, may sue for the same : Ind. 4061.

Failure of a railroad to commence work within one year from the special tax, or failure to complete the railroad within three years, shall forfeit the rights of the company, unless the county commissioners shall give further time, not to exceed one year : Ind. 4062.

No tax for such donation can be made until the railroad has been permanently located in a county or township making it or taking the stock : Ind. 4068.

But no such bonds shall be delivered, or be valid if delivered, until the road to aid in the construction of which such bonds were voted shall have been completed and in operation by the passage of cars continuously from one terminus to such points as such company shall have agreed to construct the same in consideration thereof : Wis. 948.

Whenever any county, town, village, or city shall have failed to limit the time within which any aid or subscription voted to any railroad company should be earned by performance of the conditions on the part of the company, then the proper board or common council thereof may fix and limit such time, but to be not less than a year from the date of giving notice to the railroad company thereof ; and whenever the time shall have been limited, either by agreement or as provided above, the proper board or common council may, in their discretion, extend the time not exceeding one year beyond the period so limited : Wis. 955.

No such bond shall be delivered until the railroad is completed through or to the district granting aid, or the nearest point thereof : Minn. 2615 ; Kan. 23,132.

A time not less than one year may be fixed by the towns, etc. for the completion of such road as a condition precedent to the subscription : Minn. 2620.

When any county, city, or town has heretofore voted, or may hereafter vote, a subscription to any work of internal improvement, in money, bonds, or property, no action, suit, or other proceeding shall be instituted to enforce such subscription after ten years from the time it was voted : Va. 1249.

A statute of 1888 makes valid township bonds theretofore issued by county commissioners as corporate agents of any township in aid of any railroad by vote of the inhabitants of said township, and provides for the assessment of a tax to pay the same : provided, that no tax shall be levied until the railroad has been completed through the township and accepted by the railroad commissioners, nor to pay the interest that may have accrued on such bond before such completion of the railroad : S.C. 1888,10.

**§ 8654. Tax and Sinking Fund.** Special provision is made for meeting the interest upon such bonds by taxation : Vt. 2774 ; Ill. 113, 15 ; Va. 1248 ; W.Va. 54,59 ; N.C. 1999 ; Tenn. ib. 13.

Every county, town, city, or village issuing bonds in pursuance of this act is legally bound therefor, and must annually collect a tax for the payment of all moneys to become due upon such bonds, whether for principal or interest, in addition to all other taxes, and the money so raised must be kept as a separate fund therefor : N.Y. 1877,349,3 ; Wis. 943 ; Minn. 2619 ; Wy. 561,564 ; N.M. 2712.

Provision is made for a special tax to meet the instalments of such subscription : Ind. 4056 ; Va. 1248 ; Tenn. 1289-1290 ; and not more than thirty-three and one third per cent of the stock subscribed can be collected in any one year : Tenn.

Not more than one tenth : Va. A fourth : Tenn.

Not less than one half shall be raised the first year ; but not more than one per cent on the town valuation : Ind.

The above provisions for a tax are irrepealable : Wis. 943.

Counties, towns, etc. are authorized to create a sinking fund for such bonds : N.Y. 1869,907,6 ; Ill. 113,36 ; Wis. 958 ; Wy. 56,1.

They are required to establish one sufficient to pay the principal at maturity : Va. 1248 ; W.Va. 54,59.

But not until fifteen years after the issue : Wy. It must be established within three years, to redeem such bonds within twenty-five years : N.Y.

Towns and cities so subscribing for stock or bonds may raise money to pay for the same by tax or by loan within the legal limits of their indebtedness, and may issue their notes or bonds for such loan, and hold and dispose of such stock in securities, in like manner as other town property ; and the selectmen of towns, or such persons as may be authorized by the city council of cities, may represent them at meetings of the corporation, and vote : Mass. 112,50.

A city or town raising money by loan as aforesaid shall raise and pay, besides the interest, each year after the third, not less than three per cent of the principal : Me. 51,136 ; 1891,77.

It may, for the purpose of establishing a sinking fund for the payment of such indebtedness, provide to be annually levied and collected a tax upon the taxable property of such municipality, not exceeding six mills on each dollar of the assessed valuation thereof for the year in which it is levied, in addition to any tax required to be levied for the payment of the interest or principal, or both, in any such year : Wis. 958.

Should the taxes voted in aid of any railroad under the provisions of this act remain in the county treasury for more than one year after the same have been collected, the right to them by the railroad company shall be considered forfeited, and the persons who paid the said taxes shall be entitled to receive them back : Io. 1884,159,8.

And it is provided that money paid in such taxes shall be given in exchange for a certificate by the county treasurer, which certificate is exchangeable for stock in the railroad company, or for bonds when so provided in the petition : Io. 1884,159,6.

And these taxes may also be paid, under contract with the railroad, in labor or supplies : lo. 1884,159,9.

All county, city, and township taxes upon such railroad company shall be set apart to be applied to the payment of such county, etc. bonds and coupons until the same are fully paid ; and the railroad mortgage bonds received by such county, etc. shall be applied in the same manner (but no railroad mortgage bonds so received shall be sold under ninety cents) : Kan. 23,137.

An annual tax levy is made specially to meet the interest on the county, etc. bonds so issued, and to provide, in addition to the railroad tax and income and proceeds of the railroad bonds, for the payment of the principal : Kan. 23,133 & 137.

"That when any one or more townships shall subscribe to the capital stock of any railroad when the whole county does not subscribe, all money raised by taxation of said road for county purposes in said township, shall be applied to the payment of said subscription and interest thereon, until said debt so created shall be liquidated by said township : " N.C. 1887,97,1.

It shall be unlawful for any county, city, town, or township to contract any debt, pledge its faith, or loan its credit for the construction of railroads, the support or maintenance of internal improvements, or for any special purpose whatsoever, to an extent exceeding in the aggregate ten per cent of the assessed valuation of the real and personal property situate in said county, city, town, or township. The levy of any tax to pay any such indebtedness in excess of the said limitation shall be void and of no effect : N.C. 1889,486,1-2.

Separate receipts are to be given for moneys paid for taxes on account of such stock or bonds : Fla. 124,25. And there are many other provisions in Florida.

§ 8655. **Duties of Railroad.** Iron required in the construction of any such road must be carried by completed roads at two cents per ton per mile ; and such freight may be paid in capital stock of the company in which the iron is transported : Fla. 124,36.

Right of way through the state lands two hundred feet wide is granted, with right to procure materials, etc. : Fla. 124,39.

The trustees of the fund are empowered to appoint one director not a stockholder for each such railroad : Fla. 124,43.

And remove such director at will : Fla. 124,44.

In all cases when any corporation organized under this act, to induce aid in its construction, either by donation or by subscription to its capital stock, shall desire to fix the rates for any period of time for the transportation of passengers or freight, such corporation may adopt a resolution fixing such rates and the time for which the same is to be fixed, and have the same recorded in the office of the recorder of deeds in the several counties through which said road is proposed to be run ; and during the time for which they are fixed, said rates shall in no case be amended by said corporation or its successors : provided, that said rates shall not exceed the rates allowed by law : Ill. 114,27.

It shall be the duty of any railroad company or companies which shall hereafter receive such aid in the construction of the road of such company or companies, and the duty of any and all railroad companies composed in part by consolidation or otherwise of such company or companies having received such aid, to maintain and operate the railroad for which such aid has been or shall be extended, in the manner and with all the business facilities, and with all the accommodations for the business and travelling public, which was or shall be promised by the railroad company or companies which have or shall receive such aid as a consideration in whole or part for such aid ; and every railroad company which shall fail or refuse to keep and perform any promise or contract so made in consideration of or in order to induce any county, township, or city to extend such aid, shall be liable to the penalties provided : Kan. 23,158.

Whenever any railroad company, persons or person, their grantors, assignors, lessors, or mortgagors, shall have received any lands, bonds, moneys, or other valuable thing, to aid in the construction of any railroad in this state, such railroad company, persons or person, their grantees, assignees, lessees, or mortgagees, shall keep all such roads in good running order, and shall run all trains over the same, and shall cause the same to be listed for taxation as provided : Neb. 16,93.

### CHAPTER III. — POWERS.

#### Art. 870. General Powers.

§ 8700. **General Corporate Powers.** In nearly all states, a railway corporation may have succession by its corporate name for the period limited in such articles (or perpetually, if no period is limited : Vt., Minn., Ala., Oka.) ; may sue and be sued, complain and defend in courts of law or equity ; may make and use a common seal, and alter the same at pleasure : Vt. 3309 ; Pa. R.Rs. 1 & 19 ; Ind. 3886 ; Ill. 114,4 ; Mich. 3313 ; Minn. 2458 ; Neb. 1,16,74 ; Md. 23,160 ; W.Va. 54,34 ; Ark. 5423 ; Tex. 4209-4210 ; Nev. 836 ; Mon. G. L. 679 ; Uta. 2319 ; S.C. 1885,96,2 ; Ala. 1580 ; N.M. 2664 ; Ariz. 298,312 ; Oka. 1035.

So, generally, it has all the powers conferred on general corporations (§ 8200) : Wis. 1828 amt. ; Neb. 1,16,74 ; Md. ; Mo. 2542.

Corporations established by law for the construction and maintenance of railroads have the general powers (1) given by law to other corporations, and those granted by their charters and general laws of the state : N.H. 157,1 ; N.J. R.Rs. 89.

(2) Given by this chapter to railway corporations : Wis. 1820 ; Oka. 1027. See also § 8001.

They have power to enter into any obligations or contracts necessary or convenient to the transaction of their ordinary affairs, or for carrying out the purposes of the corporation : N.M. 2664, (9) ; Md. ; and generally such corporations shall have and possess, for the purpose of construction, maintaining, and operating their railroads and telegraph lines, and carrying on their business, all the rights, powers, and privileges which are enjoyed by natural persons : N.M., Uta., Ariz.

So, they may "make all contracts." Nev., Uta. S.C., Ariz.

They have power to appoint such officers and agents as they may deem necessary and the nature of its business may require, prescribing their duties, fixing their compensation, and removable at pleasure : Vt. 3309 ; Pa. R.Rs. 1 ; S.C. ; Ala. 1580 ; N.M. See also § 8533.

They have generally power to make by-laws. See § 8537.

It has power to provide for the transfer of its stock, and to make such by-laws as may be deemed necessary for the creation and preservation of a lien upon the stock of shareholders for all indebtedness or liabilities they may incur to or with the corporation : Ala. 1580.

It may declare the interests of its stockholders transferable, establish by-laws, and make all rules and regulations deemed necessary for the management of its affairs in accordance with law : Ill. 114,4 ; Minn. 2458.

They are also hereby empowered to declare and pay dividends to the stockholders in money, stock, or bonds : Ark. 5453. Compare § 8634.

To increase or decrease its capital stock in the mode and upon the terms and conditions hereinafter prescribed : Ala. 1580. See § 8610.

To admit stockholders, and to sell their stock or shares for the payment of assessments or instalments : N.M. See § 8602.

Whenever a corporation becomes the owner of any of its stock under the provisions of this chapter, it shall sell or retire the same within two years after it becomes such owner. Unless it can sell the same at private sale for as much as it cost the corporation, it shall make the sale by auction, and may make it in the Boston market: N.H. 155, 41.

A corporation organized as and for a common carrier company shall have the following powers:—

1. To make all contracts that it shall be lawful for natural persons to make for the carriage of persons, and the storage, forwarding, carriage, and delivery of property, but subject to the same liabilities.

2. To lease, and to hold and operate, any line of railway and its appendages, either before or after its completion, owned by a municipal corporation of this state, and any railway connected therewith lying without this state, and such portion of any railway within this state as may be necessary for the convenient despatch of its business. (See § 8722.)

3. To construct, or complete and equip, any railway and its appendages which it is authorized to lease.

4. To borrow money, not exceeding its authorized capital stock, at a rate of interest not exceeding seven and three tenths per cent per annum, and execute bonds or promissory notes therefor, payable in gold or lawful money, in sums of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of its property then or thereafter acquired, and its income and franchises, including the franchise to be a corporation; but no mortgage bonds shall be sold at less than par in lawful money, without the consent of a majority in interest of the stockholders, given at a meeting of the stockholders, or in writing: O. 3838. See Art. 864.

Any company incorporated or organized under the laws of this state may subscribe for or become the owner of stock in such corporation; but before any such subscriptions shall be made the directors of the company subscribing shall be authorized to make the same by a vote of the majority in interest of its stockholders, or obtain their consent thereto in writing: O. 3839. See § 8720.

Such corporations shall have such further powers as may be necessary to enable them to exercise and enjoy, fully and completely, the powers granted by this act: S.C., Ariz.; and generally all such powers as are usually conferred upon, required, and exercised by railroad corporations: Ariz. 313(14); Oka.; Fla. 39, 10.

For railroads as public highways, common carriers, etc., see § 8830.

**§ 8701. Constructing and Operating Railroad.** (A) Railroad corporations may lay out, construct, and maintain, for public use in the conveyance of persons and property, a railroad (on the line designated in such articles of association, Vt., Ct., N.J., on the line designated in the special act, Pa.\*): Vt. 3309; Ct.; N.Y. 1887, 724, 4; N.J. R.Rs. 99; Pa. R.Rs.\* 47; N.C. 1957; Ida. 2666. See also § 8742.

With one or more tracks: Ct.

A railroad company, now existing or hereafter created, may maintain and operate, or construct, maintain, and operate, a railroad with a single or double track, with such side tracks, turnouts, offices, depots, round-houses, machine-shops, water-tanks, telegraph lines, and other necessary appliances as it deems necessary: O. 3270; Neb. 1, 16, 75; Md. 23, 161; Nev. 851; Mon. G. L. 680; N.M. 2665(4); Ariz. 313(4); between the points named in the articles of incorporation, commencing at or within and extending to or into any city, village, town, or place named as a terminus of its road: O., Neb., Mon. See also § 8742.

Any railroad corporation or association, organized for the purpose, shall have

the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states: N.J. RRs. 99; Mo. 2626; Tex. 4166; and shall have the right, with its road, to intersect, connect with, or cross any other railroad: Mo.; Col. 336; see § 8726; and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination: Mo.; see § 8723.

It may erect and maintain convenient and necessary buildings, stations, fixtures, and machinery for the accommodation of the passengers, freights, and business on such railroads: Vt. 3309; N.Y.; Ind. 3903; Ill. 114,20; Mich.; Wis. 1828 amt; Minn. 2505; Kan. 23,47; W.Va. 54,50; N.C. 1957; Ark. 5447(8); Tex. 4216; Cal.; Nev. 851; Col. 336; Dak.; Ida. 2666; Uta. 2334; Ga.; Fla.; N.M.; Ariz. 313(9); Oka. 1035.

But no railway company shall have the power, either by its own employees or other persons, to construct any buildings along the line of their railroad, to be occupied by their employees or others, except at their respective depot stations and section-houses, and at such places only such buildings as may be necessary for the transaction of their legitimate business operations and for shelter for their employees, nor shall they use, occupy, or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways: Tex. 4216.

(B) It may take and convey persons and property on such railroad by the power of steam or animals, or by any mechanical power: Vt. 3309; N.Y. 1887,724,7; 1890,565,4; Ind. 3903; Ill. 114,20; Mich. 3323; Wis. 1828 amt.; Kan. 23,47; W.Va. 54,50; N.C. 1957; Mo. 2543; Ark. 5447(7); Tex. 4215; Cal. 5465; Nev. 851; Col. 336; Dak. Civ. C. 450; 1879,46,8; Ida. 2666; Uta. 2334; Ga. 1689(i); Fla. 39,10; N.M. 2665(8); Ariz. 313(8); Oka. 1035; and receive compensation therefor, subject (except in N.Y., Ind., Mich., Kan., N.C., Ark., Cal., Dak., Ida., Uta., Ga., Fla., N.M., Ariz., Oka.) to the regulations provided by law: Vt., N.Y., Ind., Mich., Wis., Minn., Kan., N.C., Mo., Ark., Cal., Nev., Dak., Ida., Uta., Ga., Fla., N.M., Ariz., Oka. And see also below, and § 8831.

May regulate the time and manner in which passengers and property shall be transported on such railroad: Vt. 3309; N.Y.; Ind. 3903; Ill. 114,20; Mich.; Wis. 1828 amt.; Kan. 23,47; W.Va.; N.C. 1957; Ark. 5447(9); Tex. 4217; Cal.; Nev. 851; Col. 336; Dak.; Ida. 2666; Uta.; Ga.; Fla.; N.M.; Ariz. 313(11); Oka.; subject to regulations provided by law: Vt., Ill., W.Va., Tex., Nev., Cal., Ida., Uta.

And regulate the tolls and compensation to be paid therefor: N.Y., Ind., Ill., Mich., Wis., Kan., W.Va., N.C., Ark., Tex., Cal., Nev., Col., Dak., Ida., Uta., Ga., N.M., Ariz., Oka.

For the legal restrictions on such tolls see Art. 883.

Subject to alteration by the legislature at any time: Kan., Cal., Ida., Ga., Fla.

To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations, fully and completely, for the management of its business transactions usual and proper for railroad companies: Cal. 5465; Nev. 851,12; Ida. 2666; Uta. 2334; N.M.; Ariz. 313(12).

§ 8702. **Holding Lands.** A railway may generally purchase, or take and hold such (A) voluntary<sup>a</sup> grants of real (or other, N.Y., W.Va.) property as may be made to it for the construction (in all States), use (Ill., Minn., W.Va., Tex.).

maintenance or accommodation (except in Pa., Il., Minn., Md., W.Va., Tex., Ala.), and operation (Wis., Minn.) of the railway: Vt. 3303,3317; N.Y. 1887, 724; 1890,565,4; N.J. R.Rs. 89; Pa.\* R.Rs. 19; Ind. 3903; Ill. 114,20; Mich. 3323 amt.; Wis. 1828; Minn. 2461; Kan. 23,47; Md. 23,172; W.Va. 54,50 & 68; N.C. 1957; Mo. 2543; Ark. 5447; Tex. 4212; Cal. 5465; Nev. 851; Dak. 1879,46,8; Ida. 2666; Uta. 2333; Ga. 1689(i); Ala. 1580; Fla. 39,10; N.M. 2665; Ariz. 313(2); Oka. 1035. See also § 8743,A.

So, for depot purposes and storing freight: Vt., N.Y., Pa.,\* Mich., W.Va., Ark., Cal. "For its necessary structures:" Pa.\* "Other accommodations": N.Y., Pa.,\* W.Va., Cal., Ga., Ala.

It may receive, hold, enjoy, and convey any lands that may be given, granted, or donated by any individual or state to such company as an inducement to such company to construct such road: Minn. 2461; Ark. 5423.

But the real estate thus received by voluntary grants shall be held and used for the purposes of such grants only: Vt. 3317; N.Y. 1887,724; N.J. R.Rs. 89; Ind. 3903; Ill. 114,20; Mich.; Wis.; Kan. 23,47; N.C. 1957; Mo.; Ark.<sup>6</sup>; Dak.; Ga.; Oka.

**(B)** It may purchase, hold, and use all such real estate ("in the vicinity of its road," Mon.), or personal property as may be necessary for the construction and maintenance of its railroad and the stations and other accommodations necessary to accomplish the object of its incorporation: Vt. 3309; N.Y.; N.J. R.Rs. 89; Pa. R.Rs. 1 & 19; Ind. 3886,3903; Ill. 114,20; Mich. 3313,3323; Wis. 1828; Io. 1241; Minn. 2461; Neb. 16,74; Md. 23,160; W.Va. 54,50; N.C. 1957; Ark. 5423,5447; Tex. 4211; Cal. 5465; Nev. 836,851; Dak. Civ. C. 417; 1879,46,8; Ida. 2666; Mon. G. L. 679,692; Uta. 2319,2333; S.C. 1885,96,2; Ga.; Ala. 1580; Fla. 39,10; N.M. 2664-5; Ariz. 298,313; Oka. 1035.

And take the same under Art. 873: Vt., N.Y., Io., Wis., Ark., Nev., Dak., Uta., Ariz., Oka. See § 8743.

Not exceeding any amount limited in the articles and by-laws: Vt., Pa.

But not until the compensation to be made therefor, as agreed upon by the parties, or ascertained as hereinafter prescribed, shall have been paid to the owner or owners thereof, or deposited as hereinafter directed, unless the consent of such owner be given to enter into possession: Ind., Mich.

Such lands, etc. may be "in this or other states:" Vt.

They may be held "in fee simple or otherwise:" Vt.

They must not exceed the amount, if any, limited in the articles of incorporation or by-laws: Vt. 3309.

So, it may erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation of passengers and freight, and obtain and hold all lands necessary therefor: Mich.; Mo. 2543.

Any railroad corporation may purchase, hold, and convey real estate, lying near to or adjoining its road, not exceeding in value five per cent of its capital stock: N.H. 157,7.

Every railroad company may hold such real estate as may be convenient for accomplishing the objects of its organization: Ct. 3438.

It may hold, purchase, and convey such real estate as the purposes of the corporation shall require, not exceeding the amount limited in the articles of association: Pa. R.Rs. 1.

Any railroad company organized under the laws of this state may purchase, hold, and convey lands, or any interest in lands, in any other state through which any part of its railroad is operated, or may purchase, hold, and transfer stock in any company organized



in another state, owning lands as aforesaid, for the purpose of securing for such railroad in this state a permanent supply of fuel for its use: N.Y. 1890,565,4.

And may hold stock of union depot companies in the state: N.Y.

Any company incorporated under this act may purchase, have, and hold real estate at or near the commencement and termination of the said road, or at any other point on the line of the said road where the directors may think proper to establish a depot, not exceeding ten acres at each place, and may also erect and build thereon houses, warehouses, workshops, and such other buildings and improvements as they may deem expedient for the safety of their property and for other necessary uses appertaining to their business, and receive the rents and emoluments thereof: N.J. Suppl. R.Rs. 20.

Railroad companies may purchase and hold so much land at their stations as may be strictly necessary for storing and working upon their engines, cars, fuel, materials, freight, and for wagon roads and all strictly station and railroad purposes: N.J. R.Rs. 65.

It shall be lawful for any railroad, canal, or transportation company, incorporated by this state, to lease, purchase, hold, and convey any real estate that may be necessary for the purpose of carrying on its business in any of the adjoining states, the laws of such state or states not prohibiting: N.J. R.Rs. 68 & 178. See also § 6880.

Railroads are authorized to acquire, hold, and convey all lands required in the judgment of the directors for terminal purposes: N.J. 1890,174.

Also to contract for, and hold in fee simple or otherwise, lands or buildings in this or other states for depot purposes; and also to purchase and hold such personal property as shall be necessary and convenient for carrying into effect the object of this act: Ill. 114,42.

Railroads may purchase and hold lands in the vicinity so far as convenient to secure the right of way, or lands granted in aid of the construction of such road: Neb. 1,16, 85; Md. 23,172.

And also receive, purchase, and hold real estate as a basis for the construction of the railroad of any such corporation, and may issue stocks and bonds, or both, for the payment of the same, upon such terms and conditions as the stockholders, directors, or owners thereof may agree upon and determine, and sell and convey such real estate upon such terms and conditions as the corporation may authorize: W.Va. 54,68.

(C) **Personal Property.** "A railroad may purchase and hold such personal property (1) as is necessary and convenient for carrying into effect the object of this section:" Vt. 3303.

(2) As the purposes of the corporation shall require: Pa. R.Rs. 1.

In other states there would seem to be no limitation. But compare Art. 872.

NOTES. — <sup>a</sup> For *involuntary* taking, see Art. 873. <sup>b</sup> "According to its terms."

§ 8703. **Power to Convey.** A railway has usually a general power to convey all land taken by voluntary grant or purchase: Vt. 3309; Pa.; Ill. 114,20; Wis.; Minn.; Kan. 23,47; Neb. 16,85; Md. 23,172; W.Va. 154,68; Tex.; Nev.; Dak.; Mon. G. L. 692; Uta.; S.C.; Fla.; N.M.; Ariz.; Oka.

So of any land: Col. 344; S.C. 1885,96,2.

All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservations for the establishment of machine-shops, turn-outs, and switches, shall be alienated and disposed of by said company in the same manner and time as is required where lands have been received from the state: Tex. 4213.

The three preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as to those corporations that are not so prohibited: Tex. 4214.

All deeds made by the company must be under its seal and signed by the president : O. 3282 ; Neb. ; Md. 23,172 ; Col. ; Mon.

They are recorded with the secretary of state : Wis. 1839.

All conveyances by a railroad company or its assigns of any interest in its location, for railroad purposes, may, and if in the nature of a lease for more than one year shall, be recorded with the secretary of state : Ct. 3474.

Certificates of the assignment, release, or foreclosure of any lien or interest upon railroad locations acquired as above, or under the general laws, may be recorded in the same way : Ct. 3475.

Every conveyance or lease, deed of trust, mortgage, or satisfaction thereof, made by any railroad corporation, of any franchises, real estate, fixtures, or other real property, in pursuance of law, shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be by these statutes, to entitle the same to be recorded, and shall be recorded in the office of the secretary of state : Wis. 1839. Compare § 8642.

Any acknowledgment by or on behalf of a corporation made substantially in the form herein prescribed shall be *prima facie* evidence of the facts therein recited, and that such conveyance or instrument was executed by authority of its board of directors or trustees, and that such corporation was competent and authorized to make such conveyance : Minn. 1889,118.

§ 8704. **Telegraphs.** (Compare Art. 895.) Railways are commonly given power to construct and operate telegraph lines : N.J. Suppl. R.Rs. 98-102 ; Ind. 4018 ; Minn. 2448 ; Va. 1231 ; W.Va. 54,69 ; Ark. 1885,107,12 ; Mon. G. L. 695 ; N.M. 2664 ; Ariz. 313.

And to hold stock in telegraph companies : Ind. 4169.

And to charge a reasonable compensation for transmitting messages : Ind., Minn., Va.

A United States statute requires that all subsidized railroads, or roads having land grants, shall maintain telegraph lines, and the Interstate Commerce Commission may compel compliance with such law : U.S. 1888,772.

A railroad company may become a stockholder in any telephone or telephone exchange company : Ind. 4189.

A railroad corporation may hold stock in a telegraph company whose telegraph connects two or more places upon the railroad, to an amount not exceeding two hundred dollars for each mile of railroad so connected : Mass. 112,75.

Railroads must establish telegraph offices not more than twelve miles apart : Va. 1257.

Every operator must telegraph the arrival and departure of every train to the train dispatcher or the nearest telegraph office in the direction in which such train is going : Va. 1259. Compare § 8826.

§ 8705. **Bridges and Ferries.** It may so construct its bridges as to answer the ordinary purposes of travel and business, as well as railroad purposes, and may demand and receive such rates of toll for the passage of individuals, vehicles of all kinds, or animals, as it may fix, subject to the approval of the commissioners of the county or counties in which such bridge is erected : but the rates of toll must be uniform, shall be printed or painted and kept conspicuously posted in or near the toll-house of the bridge, and may be revised and changed in the first week in each year ; and the company may compound and bargain with any person or party for the use of such bridge, by the month, quarter, or year ; but no company shall receive toll upon any such bridge if erected within one mile of any toll-bridge previously constructed over the same stream : O. 3285. Compare § 8746,D.

Railroads are authorized to construct bridges over navigable streams, but not to obstruct the free navigation thereof : Ind. 3961 ; W.Va. 54,69.

Provided that railroads are prohibited from charging tolls to persons crossing such bridges when any toll bridge or ferry has been erected within eighty rods of the place of the railroad bridge : Ind. 3961.

They may collect tolls on all bridges : W.Va. See §§ 8746, 8812.

**Ferries.** Railroads having a terminus in New York harbor may purchase and operate ferry-boats therein : N.Y. 1890,565,54.

So, all railroads having a terminus on navigable waters : N.J. R.Rs. Suppl. 25 ; Ill. 114,47 ; Mich. 3357a.

And may purchase or rent wharves : N.J. 1888,160 ; Pa. R.Rs. 38.

And boats or vessels : N.J.

But may not condemn property for landing purposes, etc. : Ill.

**Docks.** A railroad which crosses or reaches any navigable stream may erect docks and wharves therein as shall be needful, and purchase and hold or condemn any lands or wharves for such purpose : Pa. R.Rs. 38.

Provided, that no right shall exist under this act to condemn any real estate for landing for such water craft, or for any other purpose ; and this act shall only apply to such railroad companies as own the landing for such water craft : Ill. 114,47.

Provided, also, that nothing in this act shall be held to impair or affect any right or privilege granted any ferry company incorporated under the laws of this state, and that all the powers and rights herein granted said railroad companies shall be subject to whatever rights and privileges may have heretofore been granted to any ferry company in this state, and that nothing in this act shall prevent said railroad companies from being subject, in the use of such water craft, to all laws of the state regulating ferries now in force or hereafter to be in force : Ill. 114,47.

And provided further, that nothing in this act shall be held or construed to authorize any railroad or railway company, doing business under any charter granted by this state, to consolidate with any railroad or railway company out of this state, so as to form one continuous line of railroad, or otherwise to alter, modify, or repeal any provision of any such charter granted by this state, or to impair the rights of this state as now reserved to it in any such charter : Ill. 114,47. See Art. 873.

§ 8706. **Furthering other Enterprises.** Any railroad company incorporated under the laws of this state may own and operate any line of steamships or steamboats : Md. 23,203 ; Ga. 1689(a) ; Fla. 39,27.

Or may subscribe to or hold the stock of any company owning and operating such steamships or steamboats, where such steamships and steamboats can be used wholly or in part in connection with the business of said railroad company : Md.

A railroad corporation may guarantee, to an amount not exceeding five per cent of its capital stock, the bonds of any corporation incorporated by the general court for the purpose of carrying freight, passengers, and mails between any port of this commonwealth and Europe ; or, upon adequate security therefor, may issue its own bonds to the same amount, conformably to the provisions of section sixty-two : Mass. 112,76.

A railroad corporation may become an associate under the provisions of chapter one hundred and six in the formation of a corporation for the purpose of erecting and operating a grain elevator or elevators within the commonwealth, and may take stock in any elevator corporation so organized : Mass. 112,77.

So, a railroad may hold one third the capital stock of an elevator company : O. 3842.

It shall and may be lawful for railroad and canal companies to aid corporations authorized by law to develop the coal, iron, lumber, and other material interests of this commonwealth, by the purchase of their capital stock and bonds, or either of them, or by the guaranty of or agreement to purchase the principal and interest, or either, of

such bonds : provided, that this act shall not apply to the stock and bonds of any corporation possessing mining or manufacturing privileges in the county of Schuylkill : Pa. R.Rs. 133.

Railroads may make leases and contracts with canal and navigation companies situated in any state : Pa. R.Rs. 139.

Such company shall not use its funds in the purchase of stock in any other corporation except upon the written consent of all the stockholders of the company desiring to purchase such stock, and also the written consent of all the stockholders of the corporation in which stock is sought to be purchased : Ind. 1891,136,1.

It shall be lawful for any railway within the state, or which may own, lease, or operate in the future any such line or lines of railway within this state, to take, acquire, own, negotiate, sell, and guarantee bonds and stocks of companies or corporations which are or may hereafter be organized for the purpose of irrigating and reclaiming lands within this state, and to build, own, and operate irrigating ditches and canals in this state for the purpose of irrigating and reclaiming arid lands contiguous to or tributary to such line or lines of railway : Wash. 1889-90,529.

§ 8707. **Ultra Vires.** No corporation can assign its charter or any rights under it, lease or grant the use or control of its road, or any part of it, or divest itself thereof, without consent of the legislature : Me. 51,54.

So, it may not, without such consent, lease its road or franchises, or any part thereof, to any foreign corporation or resident of any other state : N.J. Suppl. R.Rs. 91. See § 8722.

On complaint of a violation of these provisions by any person, the attorney-general shall file an information in the nature of a writ of *quo warranto* against the corporation, and the court may enter such decree as justice and equity require : Me. 51,54.

No railroad or mining company formed or organized under any of the provisions of this article, or which has organized under any existing laws, charter, or act of the general assembly of this state, shall own, conduct, or carry on any store, or have any interest in any store, or receive any portion of the profits thereof ; but nothing herein contained shall prevent the employees of any corporation from forming co-operative stores : Md. 23,202. Compare § 8553.

§ 8708. **Miscellaneous Powers.** It shall be lawful for any railroad company organized under the laws of this state to lease iron rails to any person or corporation for such time and upon such terms as may be agreed on by the contracting parties, and upon the termination of the lease by expiration, forfeiture, or surrender, to take possession of and remove the rails so leased as if they had never been laid : provided, it shall be so stipulated in the contract or lease : N.C. 1887,341,1.

All railroads owning or operating lines of transportation in this state are authorized to purchase, lease, hold, operate, or maintain eating-houses, hotels, and restaurants : N.C. 1889,518,1.

## **Art. 871. Branches and Extensions** (Compare Arts. 872, 888.)

§ 8710. **Branches.** (See also § 8711, A.) (A) Any railroad company shall also have power to construct, equip, maintain, and operate branch railroads leading from the main line, or from the termini of such railroad, from and to such points within this state, or any adjoining state, as may be deemed expedient : Ind. 3951 ; Mich. 3342 ; Wis. 1831 ; Dak. 1879,46,10 ; Ala. 1587 ; Okla. 1039.

Not exceeding five miles in length : S.C. 1885,94.

(B) May construct, maintain, and operate branches from the main line to other

towns or places within the limits (1) of any county through which said road may pass : N.J. R.Rs. 99 ; Md. 23,161.

(2) Of the state : Minn. 2448 ; Kan. 23,118 ; Neb. 1,16,75 ; Va. 1189 ; Tenn. 1889, 158 ; Ark. 1889,116 ; Mon. G. L. 680.

(C) In New Hampshire, a railroad desiring to build an extension or branch must proceed by petition to the supreme court, as in the case of originally laying out a railroad (see section 8747) ; and authority obtained from the court to build such branch or extension must be exercised within two years after the decision : N.H. 155,18-20.

A railroad corporation, after having finished the construction of its main road, and put the same in operation, may build branches or extensions thereof in accordance with the provisions of this chapter, if an amount of additional capital stock applicable solely to the construction of such branch or extension has been subscribed and a certificate filed, and may build such branches or extensions without additional capital stock, if its indebtedness is not thereby increased : Mass. 112,139 ; 1884,279.

A company may construct branches from the main line to towns or places within the limits of any county through or into which its road passes, or to a connection with any railroad which is or may be built within this state, or to any coal or other mine, if, at a meeting of the stockholders called for that purpose, the holders of a majority of the capital stock of the company, by a vote, in person or by proxy, so determine ; and upon such determination the president and directors shall make and acknowledge a certificate setting forth the facts, and file the same with the secretary of state : O. 3280.

Any company incorporated under this act shall have authority to construct such branches from its main line as it may deem necessary to increase its business and accommodate the trade and travel of the public : Pa. R.Rs. 9.

Any railroad may make branches to the boundary line of any county in which such road may have a terminus, such boundary line being also that of the state ; and may take stock in any bridge company on the route of said road, or at the terminus, for the use of said road : provided, that if such bridge be at the terminus, it shall be constructed so as to admit the passage of vehicles, foot passengers, and for general purposes : Ind. 4013.

A railroad may construct branches to or through adjacent mineral lands containing coal or iron, not exceeding thirty miles from the nearest point on the main line ; provided the owners of one third of the stock do not object : Ind. 4014.

Any railroad may build and construct lateral and branch roads, or tramways, and of any gauge whatever, not exceeding fifty miles in length, and may build planes and gravity roads : W.Va. 54,69.

Railroads may provide for constructing and operating branch lines from any point on the original line to any other point in this state, provided the branch line make an angle of at least twenty-five degrees with such main line in the general course : Tex. 4113 ; 1891,105.

**§ 8711. Extensions.** (A) Any railroad may, under the provisions of this chapter, extend its railroad from any point named in its charter or articles of incorporation, or may build branch railroads either from any point on its line of railroad or (except in Fla.) from any point on the line of any other railroad, between such points connecting with its line of road, or to be connected therewith, or with any line of road such corporation may have acquired the use of under lease for a term of not less than ten years : Wis. 1831 ; Minn. 2539 ; Dak. 1879,46,10 ; Wash. 1890, p. 526 ; Ida. 1891, p. 125 ; Fla. 39,12 ; Oka. 1039.

(B) A company may extend its road beyond its designated termini (1) upon majority vote of the stockholders (at a special meeting, O.), and certificate of such extension, naming the places and counties, being filed with the secretary of state : O. 3306 ; Ind. 4016 ; Ark. 1889,116 ; W.Va. 54,53 ; 1889,23.

(2) So, but no vote of stockholders seems necessary: Wis. 1831; Ga. 1689(j); Ala. 1587; Oka. 1039.

(3) Upon two-thirds vote of directors, the capital stock being adequate (§ 8523) thereto: Mo. 2559.

(C) Any company organized for the purpose of constructing a railroad to the boundary line of the state may extend its road into and through any adjoining state under the regulations which may be prescribed by such adjoining state: O. 3279; Ind. 3972; Io. 1277; Neb. 1,16,115; Mo. 2568; Kan. 38,115; Dak. Civ. C. 462. See also § 8880.

Any railroad formed under the general law may extend its road to other points, on application to the commissioners, as in case of change of gauge (§ 8529), and conforming to the general railroad law so far as applicable: Me. 1887,96,2.

**§ 8712. Powers, etc.** Such corporation shall have and exercise, with respect to such extension or branch, all the rights, powers, franchises, and privileges possessed by such corporation pertaining to its main or other line of railroad: O., Ind., Mich., Wis., Io., Minn., Kan., Neb., Dak., Wash., Ida., Oka.

So, as to condemnation, right of way, etc.: S.C.

May receive municipal and other aid in the construction of such branch or extension as now or hereafter authorized by the general laws of this state: Minn. 2539.

Provided, however, that any railroad company organized under special charter, by extending its lines, shall not carry with it any special privileges guaranteed it under its charter, as to such extension, but only such rights and privileges as are conferred under the general law: W.Va. 54,53.

**Process.** Railways may construct branch lines (1) upon filing a resolution of such intent with the secretary of state: Minn. 2448.

So, upon filing an amendment to its charter: Tenn., Tex.

(2) It must be authorized by persons holding or representing two thirds of the capital stock of the railway company proposing to build such branch line, at a stockholders' meeting called for that purpose: Kan.

So, by a majority vote: Ark., Ala.

(3) Branch roads not exceeding two miles may be built by the directors; and branches not exceeding twenty miles may be built with a two-thirds vote of stockholders at a general meeting: Va.

(4) Apparently a simple vote of directors is enough: W.Va., Ga.

To be entered in the records of the proceedings of the corporation, and designating the point from which, and the point to which such extension or such branch road is to be constructed: Ala. 1889,87; Ga.

And it must be recorded as in § 8522 provided: Ala., Ga.

**Map.** Before making such extension such corporation shall, by resolution of its board of directors, designate the route of such extension by a plat or map thereof, duly certified by such corporation under the seal thereof, signed and verified by the president and secretary of such company, and file the same in the office of the secretary of state of this state: Minn.; Wis. 1831; W.Va. 54,53; Dak.; Wash.; Ida.; Fla.; Oka.

Such extension may be located by the most practicable route, and may pass out of this state into any other state with the assent of such state, and back again into this state, as often as may be found necessary: W.Va. 54,53; 1889,23.

**Completion.** If a railroad corporation does not begin the construction of such branch or extension, and expend thereon at least ten per cent of the additional capital stock required by the preceding section, within two years after the date of the certificate mentioned therein, and complete the same and put it in operation within four years after said date, its power to construct the same shall cease: Mass. 112,140.

Branches must be built at least ten miles the first year from such amendment filed, and twenty miles additional each succeeding year : Tex. 4114.

§ 8713. **Spur Tracks and Private Branches.** The owner of any elevator, warehouse, or mill (mine, Mo.), at or near any station or terminus of any railroad, may, at his own expense, construct a railroad track from such elevator, warehouse, or mill to such railroad, and connect with the same by a switch at a point within a reasonable distance from such station or terminus ; and the railroad corporation shall allow such connection : Wis. 1802 ; Minn. 509(c) ; Mo. 2623 ; Ore. 4038 ; N.Dak. 1890,122,3.

Such side track and switch shall at all times be under the control and management of, and be kept in repair and operated for the benefit of, such owner or his assigns by such corporation ; but the actual cost of so maintaining and operating the same shall be paid monthly by the owner thereof : Wis.

Any individual, joint stock association, or corporation, engaged in any lawful business in this state, may, except in any city of the state, lay down and maintain such railroad tracks on or across any street or highway, not exceeding three miles in length, as shall be necessary for the transaction of its business, and to connect any place of business owned by them with the track of any railroad corporation, and render such place of business more accessible to the public, upon obtaining the written consent of the owners of all the lands bounded on, and of the local authorities having control of, that portion of the street or highway upon which it is proposed to construct or operate such railroad ; if the consent of such property holders cannot be obtained, the supreme court may, upon application, appoint three commissioners, who shall determine ; but no such railroad shall be graded, located, built, or operated as to interfere with or obstruct the travelled part of any highway : N.Y. 1890,565,20. Compare § 8746.

Any person, upon written permission given by the board, may exercise in the same manner, and to the same extent as is now enjoyed by railroad companies, the right of condemning and appropriating land, and laying out and constructing any spur, switch, or railroad track thereover, and connecting the same with any railroad already constructed ; and the right to use such spur, switch, or track shall be public, at rates and on terms and conditions such as the board shall prescribe, if the parties interested cannot agree : Kan. 23,184.

In West Virginia, the owners or lessees of timber land, quarries, mills, wells, mines, lime kilns, or other real estate in the vicinity of any railroad not more than twelve miles distant therefrom, are given authority to make a railroad thereto : W.Va. 54,69a.

Provided, that this shall not be construed so as to require any common carrier to construct or furnish any side track off from his own land : Minn. ; N.D. 1890,122,3c.

Every railway is authorized to build and operate branches and spur tracks to any mills, manufacturing establishments, or other industries requiring railway facilities, and acquire by purchase or condemnation land therefor : Me. 51,18 ; Wis. 1831a.

“Under direction of the commissioners :” Me.

Whenever any person, persons, or corporations owning or operating any coal mine or mines within the state of North Dakota, from which mine or mines not less than fifty cars of coal have been shipped from any one station over any portion of any railroad within the limits of the state of North Dakota, shall petition any such railroad company to build a side track or spur at least three hundred feet in length adjacent to said mine or mines, it shall then be the duty of such railroad company to build, equip, and operate such side track or spur ; provided, such spur is not nearer than two miles from any station already in operation ; provided, further, that any person, company, or corporation opening a coal mine within two miles of any station may petition for a side track or spur, and by executing an indemnity bond in favor of said railroad company in the

sum of two thousand dollars, conditioned on the agreement that said person, company, or corporation will ship within one year after the completion of such spur or side track, not less than one hundred car-loads of coal; and when such bond is duly executed with two sureties, approved by the county judge of the county wherein such side track is situated or attached for judicial purposes, the said railroad company shall within sixty days build, equip, and operate such side track or spur, as provided for in this section: N.D. 1890,128,1.

### **Art. 872. Contracts with other Railways.**

§ 8720. **Stocks and Bonds of other Railways** may (A) be purchased and held by a railway when it is a connecting road: Pa. R.Rs. 121; Kan. 132,23,89; Neb. 1887,58; Tenn. 1262; Mo. 2568; N.D. 1890,129; Ida. 1891, p. 17; Mon. G. L. 704; S.C. 1434; Fla. 39,27.

Provided such other railway be chartered by, or authorized to extend into, the state: Pa., Tenn., S.C.

And the lien of such bonds may be enforced by foreclosure or otherwise by the creditor railroad, and it may purchase at the sale in the same way as an individual: Kan. 23,90.

A railroad corporation may aid in the construction of any branch or connecting railroad (Mass., Ala.) within the limits of this commonwealth (or without, N.C.), whether connecting by a railroad or steamboat line, by subscribing for shares of stocks in such corporation (or of any steamship line connecting the terminus of such road with any part of the United States, S.C.), or by taking its notes or bonds, to be secured by mortgage or otherwise, and may vote on all shares of stock so subscribed for and held: Mass. 112,80; N.C. 1885,108; S.C. 1435; Ala. 1580.

But no corporation shall so subscribe to an amount in excess of two per cent of its paid up capital stock, except by a vote of a majority in interest of the stockholders at a meeting duly called for that purpose; and no corporation shall mortgage its property to secure the loans or subscriptions made by any other corporation under this section, except by a vote of a majority in interest of the stockholders at a meeting duly called for that purpose: Mass. 112,80.

Any company may aid another (with its consent, Mich.) in the construction of its road by means of subscription to the capital stock of such company, or otherwise (O., Neb., Mo., Dak., Wy., Ala., N.M.), for the purpose of forming a connection of the roads of the companies: O. 3300; Mich. 3342; Neb. 1,16,94; 1889, 89; Mo. 2568; Dak. Civ. C. 473; Wy. 553; 1890,18; N.M. 2701.

When the road of the company so aided does not, and will not when constructed, form a competing line: O., Mich., Neb.

And so, any company may lease or purchase any part or all of a railroad constructed by another company, if (except in New Mexico) the lines of road of such companies are continuous or connected (and not competing, O.), upon such terms and conditions as may be agreed upon between the companies; and any two or more companies whose lines are so connected and not competing may enter into any arrangement for their common benefit consistent with and calculated to promote the objects for which they were created: O.; Neb.; Mo.; Ark. 5516; Dak.; S.C. 1434; Ala. 1586; N.M. 2701.

Any railroad wholly organized under the laws of this state, at any time when it has paid dividends for the preceding three years, may by vote of its directors, authorized or confirmed by two-thirds vote of the stockholders at a meeting called for the purpose, aid in the construction or equipment of a branch or connecting railroad, and it



may own and bond the securities or stock thereof; and the parties may make such leases or mortgages as they deem necessary: Me. 1885,301.

A railroad may aid by subscription of stock, by guaranteeing bonds, or making running and business arrangements, or in any other form which may be deemed expedient by its directors in the construction of any road, constructing or to be constructed under the laws of the state; and any company organized in the state may avail itself of such aid, and enter into such agreements as may be deemed expedient by the respective boards of directors: Mich. 3413.

Any such railroad corporation may purchase and hold the stock or bonds of any railway company, not of a parallel or competing line, to which it has furnished the money for the construction of its railway, or may purchase for the money so furnished, or for such other consideration as may be agreed upon between the companies by their respective boards of directors, and take a conveyance of the whole or any portion of the franchises of said corporation, and of the railway property and appurtenances thereof: Wis. 1833.

Any railroad corporation heretofore or hereafter incorporated, whether under the provisions of this title or by special charter, may at any time and by means of subscription to the capital of any other corporation, or otherwise, aid such corporation in the construction of its railroad (within or without the state, Mo.), for the purpose of forming a connection of said last mentioned road with the road owned by the corporation furnishing said aid; or any railroad corporation may lease or purchase any part or all of any railroad constructed by any other corporation (within or without the state, Mo.) whose lines of road are continuous or connected with its own, upon such terms and conditions as may be agreed on; or any two or more railroad corporations whose lines are so connected may enter into any arrangement for their common benefit, consistent with and calculated to promote the objects for which they were created: provided that no such aid shall be furnished, nor any purchase, lease, or arrangement perfected until a meeting of the stockholders of each of said corporations has been called by the directors thereof, at such time and place and in such manner as they shall designate, and the stockholders of at least two thirds of the stock of such corporation represented at such meeting, in person or by proxy, and voting thereat, assent thereto: Minn. 2535; Mo. 2568.

Any railroad company organized under the laws of this state, or any state or territory of the United States, may aid any railroad company of this state in the construction of its road and branches by purchase of its stocks and bonds, or any portion thereof, or by guaranteeing its bonds, or the interest thereon, or otherwise: Kan. 23,112.

Any railroad of any other state and now owning or operating, or which is or may be authorized to loan or operate, by lease or otherwise, any railroad in this state, is hereby authorized and empowered, upon the resolution of its board of directors, to aid any railroad company incorporated under any general or special law of this state in the construction, renovation, or operation of its railroad by the indorsement or guaranty of its securities, which have been or may be issued for such purpose, in such manner as may be agreed upon by the board of directors of the contracting companies, or by leasing or by guaranteeing the rentals of any lease of any such railroad: Ala. 1887,21.

(B) Except by special authority of the general court (or as authorized in the six following sections, Mass.) no railroad corporation shall directly or indirectly subscribe for, take, or hold shares in the stock or bonds of (or guarantee the bonds or dividends of, Mass.) (1) any other corporation or company: Mass. 112,74; Vt. 3314.

(2) Of any railroad organized under general law: Vt. 3314; Ct. 3442.

(C) No company can purchase stock in its own or any other corporation: N.Y. 1850,140,8; Ill. 114,14; Ark. 5436; Tex. 4142.

Provided, however, that any railroad company incorporated and organized, or that may hereafter be incorporated and organized under any general or special law of this

state, and operating a railroad which now connects or hereafter may connect at any point with any railroad of any other state, shall have power, acting by itself, or jointly with another company or companies, to own and hold the stock and securities of the corporation owning said connecting road, or any part thereof: such ownership or holding to comprise at least two thirds in amount of the stock of such corporation; but in case of the purchase of stock, the company or companies so purchasing shall take and pay for all the shares of the company so purchased that may be offered, and the terms of purchase of all shares shall be the same to all stockholders: Ill. 1891, p. 185.

(D) A railway may guarantee the principal or interest of bonds of (1) connecting companies: Kan.; Neb.; Col. 1887, p. 369; N.D. 1890, 129; Ida.; S.C.

(2) Of any companies: Pa. R.Rs. 132; Mich. 3413; W.Va. 54,82a.

(3) Or of railways in adjoining states [only]: Pa.; Ind. 3951a.

(4) So foreign railways, of railways in the state: Ala. 1887, 21.

And also dividends upon the stock of connecting roads: Col., S.C.

Such guaranty must be authorized by vote of a majority of the stock: Ind., S.C.

Of two thirds: Kan. 23,112; Neb.; W.Va.

And of the directors: Ind., Neb.

It may not extend to an amount exceeding one half the par value of the stock of such guaranteeing company: Ind. 3951c.

If two corporations own and operate railroads, wholly constructed, which connect with each other, either corporation may guarantee the bonds of the other upon such terms and to such an extent as may be authorized at a meeting called for the purpose, if the bonds so guaranteed do not exceed the amount of the capital stock of such other corporation actually paid in cash by its stockholders, and are in all other respects issued in conformity with law: Mass. 112,79.

Every railroad company which shall guarantee the payment of the principal or interest of any bonds or dividend on any stock issued by any other corporation shall cause such bonds and the certificates for such stock to be registered in the office of the comptroller, and a certificate thereof shall appear on the face of each of such bonds and certificates of stock; and the comptroller shall cancel any bonds and certificates of stock so registered which may be brought to him for that purpose, and enter said act of cancelling in his register. But no railroad company shall guarantee bonds or stock to an amount which, together with the outstanding bonds issued by said guaranteeing company, shall exceed one half the actual cost of the construction of the railroad of said company, which an engineer approved by the railroad commissioners shall certify under oath has been actually expended upon its railroad. The comptroller shall not permit the registration of the bonds of any railroad company, or of any bonds whose principal or interest is guaranteed by such railroad company, or of any stock of another company upon which any income or dividend is guaranteed by such railroad company, so long as there are outstanding and uncanceled bonds of said company, and bonds or stock guaranteed by said company, the principal of which said bonds and guaranteed bonds and stock altogether is equal in amount to one half the cost of the company's railroad, to be certified in the manner hereinbefore set forth. And no railroad company shall issue its own bonds, or guarantee the principal or interest of bonds or a dividend upon stock of any other company, so long as there are outstanding and uncanceled its own bonds or the bonds or stock of another company, guaranteed as aforesaid, to a principal amount equal to one half the cost of said railroad company, as verified in the manner above set forth: Ct. 1889, 218.

Any two or more railroad companies incorporated in the state may jointly indorse or guarantee the bonds or obligations of any other railroad, and take such security therefor as may be agreed upon, either jointly or separately, and may apportion and limit their liability as between themselves, or as between themselves and the guaranteed company, as may be agreed upon: Pa. R.Rs. 138.

**The amount** of the bonds of one or more other corporations or companies subscribed for and held by a railroad corporation, or guaranteed by it conformably to special authority of the general court, or the authority given in said sections, together with the amount of its own bonds issued in conformity with §§ 8640-2, shall not exceed at any time the amount of its capital stock actually paid in cash : Mass. 112,74.

This act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier : Pa. 1887,274,3.

**Process.** No such aid shall be furnished, nor any purchase or lease perfected, until a meeting of the stockholders of each of the companies has been called for that purpose by the directors thereof, on thirty days' (sixty days', Mo.) notice to each stockholder, at such time and place, and in such manner, as is provided for the annual meetings of the companies, and the holders of at least two thirds of the stock of each company, in person or by proxy, at such meeting assent thereto : O. ; Neb. ; N.M. ; Ark. 5520 ; Dak. Civ. C. 473. So, a majority : Mo. 2568 ; Wy. 1889,18 ; Ala. 1891,264.

And in case of the lease of any railroad situate in whole or in part within this state, the rental reserved and secured for the leased road shall be equal at least to the net earnings of the same for the fiscal year next preceding the one in which the lease is made : O. 3301.

A stockholder who refuses his assent to such sale, lease, or aid by subscription, and signifies the same by notice in writing to the purchaser or lessee within sixty days thereafter, shall be entitled to receive from such purchaser or lessee, previous to the consummation of such sale or lease, the average market value of his stock for six months next preceding the day of the meeting of the companies at which the sale or lease is approved, on the surrender of his stock ; and if the stockholder and the purchaser or lessee cannot agree as to the value of the stock, the parties may submit the question to arbitration, which shall be conducted in accordance with the provisions of law regulating arbitrations, so far as the same may be applicable, by three disinterested persons, to be appointed upon the motion of either of the parties, by the judge of the court of common pleas of the county in which the owner of the stock resides, or, in case he is a non-resident of the state, or of any county through or into which the road passes, then in the county in which the principal office of the company is kept : O. 3302.

But the same shall be approved or ratified by persons holding or representing two thirds in amount of the capital stock of each of such companies respectively, at an annual stockholders' meeting, or at a special meeting of the stockholders called for that purpose, or by the approval in writing of two thirds in interest of the stockholders of each company respectively : Kan. 23,112.

§ 8721. **Purchase.** (See also §§ 8720, 8722, 8880, 8882.) Any railroad company now chartered or hereafter incorporated shall have power and authority to purchase and hold any connecting (it appears it need not be connecting, Wy.) railroad or railroads, and operate the same : Io. 1300 ; Neb. 1887,58 ; W.Va. 54, 53 ; Ark. 5452 ; Wy. 1890,18,554 ; S.C. 1885,96,5-6 ; Ga. 1689(bb) ; Ala. 1580. Within or without the state : Ga.

Or sell to it : Io. ; W.Va. ; Ark. 5526 ; Wy.

And to lease or consolidate with it : W.Va., Wy., S.C., Ala. Compare §§ 8722, 8730.

Upon consent of two thirds of the stock : W.Va., Ark. 5526.

A majority : Wy.

Any railroad in this state may sell or lease its road to any other railroad belonging to any other state (1) connecting therewith by bridge, ferry, or otherwise, so as to form a continuous line ; and any railroad in this state may buy, lease, or acquire or buy the

stock and bonds or guarantee the bonds of any railroad within or without the state, when they form a continuous line ; provided such lease or sale be ratified by two thirds of the stock of each company. And so, *vice versa*, any railroad out of the state may buy or lease the railroad, or stock and bonds, or guarantee the bonds of any railroad in the state, when so continuous ; provided such road be not parallel or competing ; and any railroad of any other state may extend its railroad through this state : provided, such agreements be ratified by two thirds the stock of the home company, a certified copy of the articles of such foreign railroad being first filed with the secretary of state, with map and profile of the line : Ark. 1889,34 ; Kan. 23,112 ; Neb. 1887,58.

(2) When such road owns all its stock : Ala. 1891,430. Compare Art. 888.

And after such purchase the purchasing company shall be vested of all the rights and powers in respect to the location, construction, completion, and operation of such railroad, and of branches thereto of the company from which it purchased said railroad, including the power to acquire and appropriate property therefor, and shall be subject to all the duties, obligations, and restrictions of said company : O. 3300.

Any railroad company shall have the power and authority to acquire by purchase or contract the road, road-bed, real and personal property, rights and franchises of any other railroad corporation or corporations which may cross or intersect the line of such railroad company or any part of the same, or the use and enjoyment thereof in whole or in part : may also purchase or contract for the use and enjoyment, in whole or in part, of any railroad or railroads lying within adjoining states ; and may assume such of the debts and liabilities of such corporations as may be deemed proper : Ind. 3951.

Upon purchasing or constructing any railroad as hereinbefore provided, the corporation purchasing or constructing the same shall have power and authority to issue new stock to such extent as may be considered advisable, and the same to dispose of as hereinbefore provided ; to issue and sell bonds to such extent as may be deemed expedient ; and to secure the same by mortgages : Ind.

All railroad companies incorporated or organized, or which may be incorporated or organized, under the laws of this state, or of this and any adjoining state, which now are or at any time hereafter may be in possession of and operating connecting railroads in states adjoining this state under lease in perpetuity, or for a period not less than twenty years, shall have power to purchase the remaining interests, property, and franchises of the lessors of such railroads situated in such adjoining states, on such terms and conditions as may be agreed upon by the parties, or their assigns, to such lease : provided, that nothing in this act shall be so construed as to authorize any corporation acting by or organizing under the laws of any other state to purchase or otherwise become the owners of any railroad in this state : Ill. 114,45.

Any railroad company organized or that may be organized under the laws of this state may sell and convey its road, together with the rights and franchises connected therewith, to any other railroad company of this state, so organized as aforesaid ; and the railroad company so purchasing may acquire and use such road, rights, and franchises by purchase of the stock or otherwise, as may be agreed between the parties interested : said railroads not having the same terminal points and not being competing lines : provided, the stockholders owning a majority of the stock of said companies shall consent thereto ; and provided further, that the company so purchasing shall hold such property and franchises subject to all the duties and obligations and with all the rights and privileges prescribed by the general railroad laws of this state : Mich. 3405a.

The railroad company purchasing by virtue of this act may issue its bonds secured by trust deed or mortgage upon the property and rights thus acquired to make payment therefor ; and such trust deed or mortgage shall have the effect of a purchase money security : provided, that nothing herein contained shall prejudice the rights of pre-existing creditors of the corporation from which such property and rights are purchased : Mich. 3405b.

Any railroad company in this state may sell or lease its road to any other railroad company organized under the laws of this state, or to any railroad company duly organized and existing under the laws of an adjoining state, whose line of railroad shall so connect with the leased road as to form a continuous line : provided, that before any such lease is valid it must be approved and ratified by persons holding or representing two thirds of the capital stock of each of such companies respectively at a stockholders' meeting called for that purpose : Kan. 23,112.

Every railroad company organized under the laws of this state whose railroad or railroads constructed or to be constructed within this state shall be so situated with reference to any railroad constructed or to be constructed through any adjoining state or territory by any railroad company organized or existing under the laws of the United States, or any state or territory, that the same may be so connected at the boundary line of this state, or at any point within this state, by bridge, ferry, or otherwise, as to practically form a continuous line of railway over which cars may pass, is hereby authorized to purchase such connecting railway, or to sell the same to the railroad company constructing, owning, or operating the said railroad through said adjoining state or territory as aforesaid, to said point of connection. And any such foreign railroad company purchasing under the provisions hereof any such connecting railroad within this state may manage the same by its board of directors and officers, and may operate the same, and may issue thereon its stock and bonds to the same extent and in the same manner as authorized by the laws of this state, and the said company shall file for record in the office of the secretary of state of this state a true copy of its articles of incorporation, and the said company shall thereafter possess, exercise, and enjoy within this state as to the control, management, and operation of the said road, and as to the location, construction, and operation of any extension of its said railroad or any connecting railroad or feeders within this state, all the rights, powers, privileges, and immunities, including the powers of eminent domain, possessed by other railroad corporations of this state, and shall be liable to all the restrictions imposed by the general laws of this state upon the railroad corporations of this state. The purchase of any such railroad shall be subject to any and all laws, encumbrance, or indebtedness existing against the railroad company from which such road may be so purchased : Neb. 1,72, IV,1.

Said corporation shall be subject to the laws of this state as to that portion of the road purchased, built, and operated in this state the same as if organized under the laws of this state ; provided, however, that nothing herein contained shall be construed as authorizing the purchase by any railroad company under the provisions of this act of any parallel and competing line of railroad within this state : Neb. 1,72, IV,2.

Every railroad corporation in this state, whether created under a general or special law, shall have the power to acquire by purchase, or other lawful contract, and have, hold, use, and operate any railroad, with its franchises, belonging to any other railroad corporation ; and likewise to have, hold, use, and operate any such railroad, with its franchises, which it may have heretofore purchased or acquired : Tenn. 1250.

Any railroad which has been created or its existence recognized by a legislature of this state is authorized and empowered to become purchaser of any railroad sold in this or any adjoining state under any judicial proceeding : Tenn. 1252. Compare § 8930.

All railroads of this or other states may build, lease, or acquire by purchase, lease, or otherwise, and operate, hold, or dispose of any railroad in any state or part thereof, as may be determined by their stockholders ; and acquire by purchase or otherwise, and hold or dispose of any bonds or stocks of any state railroad ; and indorse or guarantee the bonds of any railroad in any state whose charter was granted by the state of Tennessee : provided the same be approved by three fourths the stock at a regular or special meeting with notice by publication : Tenn. 1275.

“ Upon such terms and conditions as may be agreed upon by the board of directors

of said corporations, and ratified by a two-thirds vote of the issued capital stock thereof, and to receive the bonds or stock of the purchasing corporation in whole or in part payment of such purchase:" Ark. 5526.

Corporations may be formed for the purpose of purchasing or leasing the whole or any part of any railroad, and such purpose or object shall be stated in articles of association: Ark. 5527. See § 8930.

All shares of stock issued in payment of such purchase shall be deemed to be full paid shares, and the number and amount of shares so to be issued shall be stated in the aforesaid articles of association: Ark. 5528.

For the purpose of carrying out and executing any or all of the powers granted in the preceding sections, bonds or other evidences of debt may be issued by any leasing, purchasing, or consolidating corporation or corporations, not inconsistent with the constitution of the state; and to secure the payment of such bonds or other evidences of debt, mortgages or deeds of trust may be executed on any or all of its property then held or hereafter to be acquired, and to include in such mortgages or deeds of trust the franchise of acting as and being a corporation, and all other franchises, rights, and privileges: Ark. 5529.

Whenever any railroad company, corporation, individual, or individuals shall purchase any railroad from any other railroad company, corporation, individual, or individuals, the company, corporation, individual, or individuals purchasing shall take and hold the same subject to all debts, liabilities, and obligations of the company from which said road was purchased: Ark. 1889,55,1.

All persons or corporations having claims against the purchasing company or individual under this act shall present the same to the purchasing company or individual within twelve months after receiving notice from the purchasing company or individual of the sale, or be forever barred: Ark. 1889,55,2.

**Provided**, that no railroad shall purchase a competing line of railroad, or enter into any contract with a competing line of railroad calculated to defeat or lessen competition in this state: Ga. 1689(o). Compare the first paragraph of this section.

§ 8722. **Leases.** (See also §§ 8721, 8725.) (A) Any railroad corporation (in or out of the state, Minn., Col., Wash., Dak., Mon., S.C., Ga., Oka.) may lease or purchase (and take a conveyance or assignment of the railroad, franchises, immunities, and all other property and appurtenances, and the stock or bonds of, Wis., Ga.) any other railroad corporation, or any portion thereof, within or without this state, provided their respective railroads can be lawfully connected and operated together to constitute one continuous main line: Mass.<sup>a</sup> 112,220; Pa. R.Rs. 134; Wis. 1833; Minn. 2536; Neb. 1887,58; Mo. 2568; Col. 360; Wash. 1890, p. 527; Dak. 1879,46,13; Mon. G. L. 704; S.C. 1434; 1885,96,5; Ga. 1689(o); Ala. 1580; N.M. 2665(15); Ariz. 317; Oka. 1041.

Or when the road so purchased will constitute branches or feeders of any road maintained and operated by such purchasing corporation: Wis. 1833.

Or when the road either connects or intersects: Ct. 3473; Pa. R.Rs. 134; Io. 1300; Tenn. 1262; Wy.<sup>a</sup> 562; Fla. 39,27.

Upon such terms as may be agreed upon: Mass., Mo., Col.

And in the same way may lease its own road, or any part of it, to any other such road in any state: Ct.; N.J. Suppl. R.Rs. 20; Pa.; Io.; Kan. 23,114; W.Va. 54,53; Tenn.; Col. 361; Wy.; Fla.; N.M.; Ariz. 308.

(B) A railroad has power to lease any part of its road to any other railroad company, and to lease (or purchase, Vt.), maintain, and operate any part or all of any other railroad, upon such terms and conditions as may be agreed upon between said companies respectively: N.H. 156,21; Vt. 3303; N.Y. 1890,565,78;

N.J. RRs. 105; Pa. R.Rs. 121; Neb.; W.Va. 54,82a; Cal. 1880,21; Ore. 3221; Ida. 1891, p. 126; Wy. 1890,18; Uta. 2367; S.C.; Ga. 1689(o); N.M.; Ariz. 308.

Either lessor or lessee may be a company of another state: Vt., N.J., Neb., Mo., Cal., Mon., Wy., Uta., S.C., Ariz.

Or Canada: Vt.

But not unless the legislature's consent has been obtained: N.J. Suppl. R.Rs. 91.

Any railroad company owning any main line may contract with any company owning a railroad connecting with such main line for the lease thereof: Tenn. 1273.

**Provided**, that nothing in this act shall be construed to authorize the leasing of any railroad line to any company or corporation owning a road which forms a competing or parallel line to its railroad: N.Y. 1890,565,80; Wis.; W.Va. 54, 82a; Ark. 1887,80,6; Ore. 3221; Col.; Ariz. 318. Compare also (A).

And which starts from and terminates at the same point within the state: Ariz.

This section shall not authorize a lease or contract between two railroad corporations each of which has a terminus in the city of Boston: Mass. 112,220.

No railroad corporation shall lease or contract for the operation of its road for a period of more than ninety-nine years without the consent of the general court; but this section shall not render invalid a lease approved by the stockholders of a corporation before the first day of July in the year eight hundred and eighty: Mass. 112,222.

No company shall lease its road to any other company of this or of any state, as hereinbefore provided, unless the lessor receive full and adequate security for the payment of the rental, and for the preservation of the property of the lessor in as good condition as on entering into possession; and if the lessee fail to pay such rental promptly when due, such lease shall be void at the option of the lessor: O. 3305.

Provided, however, that no purchase, lease, or guaranty under this act shall be entered into unless the line of railroad so purchased or leased, or whose stock or bonds are purchased, or the bonds of which are guaranteed, shall when constructed form a continuous line with the road of the company purchasing, leasing, or guaranteeing, either by direct connection therewith, or through an intermediate line or lines constructed or to be constructed, which such company shall have the right by contract or otherwise when completed to use or operate, or the principal or interest of whose bonds it has guaranteed, or a majority of whose stocks it has purchased: Kan. 23,112.

Provided further, that all such agreements, and all parts of them, shall at all times be subject to amendment, alteration, or repeal by the legislature: S.C. 1434.

**Process.** Such leasing, etc. must be with the consent of two thirds of the stock of each company at a special meeting: N.H., Ct., N.Y., Neb., W.Va., Col., N.M., Ariz.

If for a term over twelve months: Ct.

So, three fifths of the stock of each company must vote in favor of the lease: Mon.

A majority: Mass., Wy.

No lease of any railroad shall be made by any trustee or receiver appointed by the court of chancery or the chancellor, except upon a rental and adequate security for the payment of the same, both to be first approved by said court and a majority of stockholders of said railroad in interest, upon such public notice to the parties in interest as said court shall direct: N.J. Suppl. Corps. 77.

**Effect.** Any railroad being the lessee of another railroad may take a surrender or transfer of the stock of such other railroad, and exchange therefor the same amount of its own stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of such stock shall have been so surrendered, the directors of the corporation receiving it shall become *ex officio* the directors of the leased road; and whenever the whole of such stock has been so surrendered, and the certificate thereof filed with the secretary of state by the corporation receiving it, the estate, property, rights, and franchises of the other corporation

shall thereupon vest in the lessee corporation ; but the rights of any stockholder not so surrendered shall not be in any way affected hereby, nor existing liabilities or rights of creditors of such corporation : N.Y. 1879,503 ; 1890,565,79 ; N.C. 1994.

When a railroad used or leased by another railroad connected therewith becomes subject in whole or part to a mortgage or other encumbrance securing bonds or other obligations given by the owners of such road so leased or used, the leasing railroad company may indorse, guarantee, or assume said bonds, in such manner and upon such terms as may be mutually agreed upon by the parties thereto or the respective directors : Pa. R.Rs. 88.

And the company to whom any railroad is leased, if a corporation of any other state, shall be subject to all the restrictions, disabilities, and duties of a railroad company incorporated within this state ; and notwithstanding such lease, the corporation of this state lessor therein shall remain liable as if it operated the road itself, and both the lessor and lessee shall be jointly liable upon all rights of action accruing to any person for any negligence or default growing out of the operation and maintenance of such railroad, or in any wise connected therewith, and may be jointly sued in any of the courts of this state of proper jurisdiction, and prosecuted to final judgment therein as in other cases of joint liability ; and provided that service may be had upon said companies, or either of them, by the service of process upon any officer or agent of either of said companies : O. 3305.

A railroad company running its trains upon the track of another railroad is liable to third persons for damages occasioned by such trains, in the same manner as though the track of the road belonged to them : Ind. 4001.

Any railroad company of any state or territory which shall so purchase or lease a railroad or railroads in this state shall possess and enjoy within this state all the rights, powers, privileges, and franchises conferred by the laws of this state upon a railroad corporation of this state : Kan. 23,112 : Wy. 1890,18.

Provided, that no such foreign corporation so purchasing or leasing under this act, which may be sued or impleaded in any of the courts of this state upon any contract made or executed in this state, or to be performed in this state, or for any act or omission, public or private, arising, originating, or happening in this state, shall have the right to remove any such cause from said state court into any of the federal courts held or sitting in this state on the ground that such corporation is a non-resident of this state : Kan. 23,112.

Any railroad company making extensions or purchases under this act may, conformably to the laws of this state, issue stock or bonds, or mortgage its property or any part thereof, to such extent as may be necessary to meet the cost of such purchase or extensions : Kan. 23,117.

It shall be the duty of any corporation, company, person, or association of persons, who is now operating or who may hereafter operate a railroad in this state under a contract of lease with any corporation, company, person, or association of persons, to have said contract of lease recorded in the office of the secretary of state, and in the office of the clerk of the county court in the county in which said line of railroad or any part thereof lies, within thirty days : Ky. 1890,1097,1.

A lessee shall hold such road subject to its liens and liabilities, and be bound accordingly : Tenn. 1274.

A railroad of this state leasing its road to a corporation of another, or permitting such foreign company to run trains upon its road, shall remain liable as if operating the road itself : Mo. ; Ark. ; Col. 360 : and the foreign company be also liable ; but the satisfaction of judgment by either corporation shall discharge the other : Mo. 2568 ; Ark. 5522.



§ 8723. **Connecting Roads: Duties.** (Compare § 8837, and see §§ 8724, 8726.) (A) Every railroad doing business in the state shall receive, forward, and deliver to every other connecting railroad, without discrimination, all passengers, freight, and merchandise with equal facilities and despatch, and shall transport the same at rates of fare and freight as favorable as at the time are established, made, or allowed for the passengers, freight, and merchandise transported over its road only, or received from or destined to any other railroad: Me. 51,129; Ct. 3532,3535; N.Y. 1890,565,12; Mich. 3342; W.Va. 54,82d; Mo. 2636; Tex. 4251,4253; 1891,51,15(c); S.C. 1887,410; N.M. 2732.

Provided, however, that the words "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as required herein shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received, and the charges for the business required by this act to be interchanged shall be no greater *pro rata* per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or that it accept for itself when transported wholly on its own line, no matter on what part of the line or in what direction the transporting is done: Tex. 4251.

(B) When two corporations are authorized, as in [§ 8726], each to enter with its road upon, unite the same with, and use the road of the other, each of them shall at reasonable times and for a reasonable compensation draw over its road the passengers, merchandise, and cars of the other, and each of them shall for a reasonable compensation provide upon its road convenient and suitable depot accommodations for the passengers and merchandise of the other corporation passing to and over it, and shall receive and deliver the same in the manner it receives and delivers its own passengers and freight: N.H. 157,10; Mass. 112,217; Me. 51,40; Vt. 3399; R.I. 1888,695,1; N.Y. 1887, 724,6; N.J. R.Rs. 111; Mich. 3299,3300,3354; Ala. 1165.

(C) They are bound to receive all passengers and freight from intersecting and connecting roads: Ct. 3535; Mich. 3355 amt.; Kan. 23,55; W.Va. 54,82d; Mo. 2582; Tex. 4251. See § 8724, A, B.

So, all cars; and to transport them to their destination with reasonable diligence; and any failure so to do gives the consignee, shipper, or owner a right of action, the damages to be from ten to twenty-five per cent of the value of goods: Ga. 1883, p. 145.

When shipments of freight to be transported between different points within this state are required to be carried by two or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road: Io. 1890,17,2.

Before the promulgation of such rates as provided in [§ 8832] the board of railroad commissioners shall notify the railroad companies interested in the schedule of joint rates fixed by them; and they shall give said railroad companies a reasonable time thereafter to agree upon a division of the charges provided for in such schedule, and in the event of the failure of said railroad companies to agree upon a division, and to notify the board of such agreement, the board of railroad commissioners shall, after hearing the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by the board shall, in all controversies or suits between the railroad companies interested, be *prima facie* evidence of a just and reasonable division of such charges: Io. 1890,17,4.

Every unjust and unreasonable charge for the transportation of freight and cars over

two or more railroads in this state is hereby prohibited and declared to be unlawful : Io. 1890,17,5. See §§ 8830-8834.

Provided that the rates so fixed by the said commission for freight offered or transported in the cars of the company offering the same shall in no case exceed the local rates per mile fixed by law or set forth in the carrying company's freight tariff, prepared and made public in accordance with the laws of the state : Io. 1293.

(D) Every railroad corporation shall promptly forward merchandise consigned or directed to be sent over another road connecting with its road, according to the directions contained thereon or accompanying the same, and shall not receive and forward over its road merchandise consigned, ordered, or expressly directed to be received and forwarded by a different route : Mass. 112,189 ; Me. 51,128 ; O. 3370 ; N.C. 1964 ; S.C. 1514 ; Wash. (Hill's Codes) 1540.

If for any good reason it cannot be billed through to its destination by the road receiving such freight, it shall be billed to such convenient point or junction on its own road as may be designated by the consignor, and there delivered to such other road or person as the owner or consignor designates : Me. 51,128.

(E) When the tracks of two companies connect as aforesaid, either company shall, when required, transport over its road, to its destination thereon, any freight offered, in the cars in which it is offered, at its local rates per mile (not over twenty miles, Tenn.), as set forth in the company's freight tariff for the distance most nearly corresponding, and return the cars, with or without freight, without unnecessary delay ; but nothing in this section shall be so construed (1) as to require any company to move upon its road cars which do not conform in breadth of gauge and in other respects to its own cars : O., Mich., N.M. ; (2) nor any that are not substantially built and in good repair : O. ; Mich. ; Tenn. 1899 ; N.M. ; (3) and properly loaded : Mich. ; nor (4) to use its machinery in moving the cars of another company to the neglect or suspension of its regular or usual business : O. 3341 ; N.M. 2735 ; (5) this does not apply to the drawing of cars of stock car-loaning companies : Mich.

And also to receive and transport in like manner the empty or loaded cars furnished by any connecting road, to be delivered at any station or stations on the line of its road, to be loaded or discharged or reloaded and returned to the road so connecting ; and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for a similar service : Kan. 23,176.

Provision is further made for the switching of cars, etc. : O. 1891, p. 45. See (G).

(F) Whenever two or more railroads are connected within this state, the corporation running either of said railroads shall receive articles for transportation to any place on the line of either of said railroads so connected, and shall be liable as common carriers for the delivery of such articles at such place : R.I. 158,21 ; N.Y. 1890,565,48 ; S.C. 1513.

But may discharge itself by production of a receipt from the connecting road : S.C.

(G) They are required to stop all passenger trains at any junction a sufficient length of time to allow the transfer of passengers, baggage, mails, and express to the other railway : Me. 51,41 ; Io.<sup>a</sup> 1884,24.1 ; Kan. 23,55 ; Tenn. 1302 ; Mo. 2582 ; Ark. 5535 ; Ind. T. ; U.S. 1890,1268.

And maintain stations properly warmed, platforms, etc. at such junctions : Mo. ; Io.<sup>a</sup> Mich.<sup>a</sup> 3355 amt. ; N.D.<sup>a</sup> 1890,126. See § 8803.

When railroads intersect or cross, and either road has a regular station, and passenger trains are due at the same hour, the train first arriving must wait from five to twenty minutes for the other, and suitable opportunities be afforded for the change of passengers and baggage : Me. ; Minn. 2571 ; Tenn.

(H) (Compare § 8726.) They shall also, whenever desired by either of them, or ordered by the commissioner of railroads, so unite and connect the tracks of said several corporations as to permit the transfer from the track of one corporation to the other of loaded or unloaded cars, designed for transportation upon both roads: Mich. 1883,174; N.M. 2733; Mo. 1891, p. 81; Kan. 23,196; Io. 1884,24; Mich. 3355 amt.; N.D. 2544.

And live freight must be given preference over dead freight at such crossing: Mo. ib. 2.

Whenever merchandise is transported over any portion of two railroads which form a connecting line and the tracks of which so unite that cars can pass from one to the other, no charge shall be made for the loading or unloading or for the carriage of the said merchandise from the cars of one of said railroads to the cars of the other: R.I. 158,20.

Car-load lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading in other cars shall be done without charge therefor to the shipper or receiver of such car-load lots, and such transfer be made without unreasonable delay, and less than car-load lots shall be transferred into the connecting railway's cars at cost, which shall be included in and made a part of the joint rate adopted by such railway companies or established as provided by this act: Io. 1890,17,2.

The cost of transferring a car of freight of any kind or class shall be one dollar: N.D. 1890,126,7.

There shall in no case be more than one terminal charge for switching or transferring any car, whether the same is loaded or empty, within the limits of any one city or town. If it is necessary that any car pass over the tracks of more than one company within such city or town limits in order to reach its final destination, or to be returned therefrom to its owner or owners, then the company first switching or transferring such car shall be entitled to receive the entire charge to be made therefor, and shall be liable to the company or companies doing the subsequent switching or transferring thereof for its or their reasonable and equitable share of the compensation received, and if the companies so jointly interested therein cannot agree upon the share thereof which each is entitled to receive, the same shall be determined by the board of railroad commissioners: Minn. 513(c); N.D. 1890,122,7.

All railroad companies in this state shall, at the terminus or any intermediate point, be required to switch off and deliver to the connecting road having the same gauge, in the yard of the latter, all cars passing over their lines, or any portion of the same, containing goods or freights consigned, without rebate or deception, by any route, at the option of the shipper, according to customary or published rates, to any point over or beyond such connecting road, and any failure to do so with reasonable diligence, according to the route by which such goods or freights were consigned, shall be deemed and taken as a conversion in law of such goods or freights, and shall give a right of action to the owner or consignee, for the value of the same with interest, and not less than ten per cent nor more than twenty-five per cent for expenses and damages: provided, that should the defendant in any suit brought under this section set up as a defence that the plaintiff has accepted a rebate, or practised fraud or deception touching the rate, it shall be a complete reply to such defence if the plaintiff can prove that defendant or its agents have allowed a rebate or rebates, or practised like fraud or deception from the same competing point against the rival line: Ga. 719(q).

(I) Every railway which may interchange business with any other connecting railway, under the provisions of this act or otherwise, is hereby declared to be a trustee for such connecting railway, to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other rail-

way. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of connecting railways to the extent of balances due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers' liens, as already provided by law, and may be enforced in any of the courts of this state: Tex. 4254.

NOTE. — "When so ordered by the railroad commissioners.

§ 8724. **Discrimination.** (A) When a railroad is intersected by two or more railroads which are competing lines for business to or from the road so intersected, the managers of such road shall transport cars, passengers, baggage, and freight to and from each of said intersecting roads on the same terms; and shall establish no rules, regulations, or terms of connection that will give to either of such competing roads an unreasonable advantage over the other: Vt. 3399; O. 3369; Minn. 509; Ark. 5535.

And if the managers of said roads cannot agree upon any of the terms aforesaid, the same shall be determined by special commissioners: Vt., Ct.

(B) All common carriers subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and switching of cars, and the receiving, forwarding, and delivering of passengers and property to and from their several lines, and to and from other lines and places connected therewith; and shall not discriminate in their accommodations, rates, and charges between such connecting lines: Ct. 3532,3535; Io. 1888,28,4; Minn. 509; Neb. 1887,60,3; Va. 1208; Ky. 1890,305,4; Mo. 2636; N.D. 1890,122,3; Ind. T., U.S. 1890,1268; U.S. 1887,104,3.

And any common carrier may be required to switch and transfer cars for another for the purpose of being loaded or unloaded, upon such terms and conditions as may be prescribed by the board of railroad commissioners: Io. 1888,28,4.

But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business: Neb. 1887, 60,3; Mo. 2636; N.D. 1890,122,3; U.S. 1887,104,3.

"Without reasonable compensation:" N.D.

No rebate, drawback, allowance, or other advantage shall be made or extended by any railroad in favor of another railroad doing business over the same, by which the operation of the preceding section shall be changed or affected, or by which one railroad doing business over it shall receive any greater advantage than any other railroad doing business over the same: Mo. 51,132.

Provision is made in New York for continued tickets and baggage checks over connecting rail and steamboat lines, and no greater rate of fare may be charged by either railroad or boat than is charged to travellers whose trip ends at the place of connection; and for the reception and transportation of freight by such lines: N.Y. 1890,565,47.

No railway shall allow through tickets or baggage checks to be issued over its line by any company not incorporated by this state which shall refuse to any other company incorporated in this state the privilege of issuing by its own agents through tickets and checks from such company's road: Va. 1207.

Every railroad or common carrier having a road, canal, or line of vessels forming part of a continuous line, or which have the terminus near the terminus of another, shall afford all due or reasonable facilities for receiving and forwarding all traffic arriving by such railroad by the other, without any unreasonable delay, and without any preference or prejudice, so that no obstruction may be offered to the public desirous of using such railroads or other lines as a continuous line of communication: Va. 1208.

Whenever any two or more railroads doing business in this state shall connect with each other by crossing each other's track or otherwise, so as to form a continuous or connected line from one point in the state to another point in the state, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then in every such case it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination if on such combined lines or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business: Tex. 4252.

If any railway company doing business in this state shall fail or refuse to interchange business with any other railway company; or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this state; or shall fail or refuse to honor or receive the tickets, coupon tickets, way bills, or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, way bills, or baggage checks of any other railway company; or shall violate in any manner any other provisions of this and the four preceding articles, such railway company so offending shall be deemed guilty of discrimination within the meaning of this act, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars: provided, nothing in this act shall be so construed as to prevent the recovery of any other damages, by any aggrieved person, firm, or corporation, occurring by reason of the violation of this article: Tex. 4255.

It is not lawful for any railroad to discriminate against any railroad company which may connect with it, either at one of its terminal stations, or at any intermediate point on its line where said companies have stations and agents established, by neglecting or refusing to deliver with due diligence to said connecting road, in the yard or on the track of the same, all cars wholly or partly loaded with freight consigned to points on said connecting road, or to points beyond its line; but in all cases where freight is to be delivered to a connecting road to complete its transportation, such delivery shall be made by the railroad which brought the freight to the connecting point, and no additional charge shall be made therefor: provided, however, that said delivering road may demand of its connections payment of all charges which have accrued thereon, on or before delivery of said freight on the tracks or in the yard of its connecting road: S.C. 1471.

Nor to discriminate in favor of or against any railroad company which may connect with it, either at one of its terminal stations or at an intermediate point on its line where said companies have stations and agents established, as against any other railroad company, which may connect with it, at the same station or point, by refusing either to receive freight for shipment, or to issue through bills of lading, at equal rates of freight for the same, to any one given destination, reached by any or all of such connecting roads, or their connections, for which freight is received, or through bills of lading are issued, to be forwarded by any other of such connecting roads at the same point: provided, however, if any of said connections shall refuse to transport freight from its own terminus to the ultimate destination of said freight at the same rate as is charged by any other connections at the same point, the initial road shall be released from the provisions of this section, and the said connecting road shall not be entitled to the benefit of its provisions: S.C. 1472.

Nor to discriminate in its rates of freight in favor of or against any railroad company which may connect with it, either at one of its terminal stations, or at any intermediate point on its line ; but in all cases the charges on freight of the same character, having the same original point of shipment and the same destination, shall be uniform to and from all lines making connections with the said railroad at the same point : S.C. 1473.

No railroad company shall discriminate in its rates of tariff of freights in favor of any line or route connected with it as against any other line or route, nor when a part of its own line is sought to be run in connection with any other route, shall such company discriminate against such connecting line, or in favor of the balance of its own line, but shall have the same rates for all, and shall afford the usual and like customary facilities for interchange of freights to patrons of each and all routes or lines alike ; any refusal of the same shall give a like right of action as mentioned in section 719(q) (§ 8723) of this code : Ga. 719(s).

None of the provisions of the foregoing sections shall apply to shipments or consignments of freights from points beyond the limits of this state, except such as come by sea, and except such as pass over the Western and Atlantic Railroad ; and in respect to said road, these provisions shall be construed as in harmony with and in furtherance of the provisions of the law and contract under which the same is leased, by which discriminations against other lines are forbidden : Ga. 719(u).

**Remedies** for violation of §§ 8723, 8724. If the corporations cannot agree upon the terms and conditions upon which accommodations shall be furnished for the passengers and merchandise of the other : N.H. 157,12 ; Mass. 112,218 ; Me. 51,119 ; Vt. 3399 ; N.J. ; Mich. ; Io. ; Ala.1166 ;—

(So when the managers of the latter road fail to perform the requirements of their charter : Me. 1891,44.

Or when either railroad deems itself aggrieved : Ct. 3533.)

(1) The board of commissioners, upon the petition of either party, and after notice to the other, shall hear the parties and determine : Mass. ; Me. ; Ct. 3535 ; Mich. 3299,3300,3354. So, the supreme court : N.H.

(2) The supreme or superior court appoints three commissioners as in case of taking land : N.J. R.Rs. 111 ; Vt. 3399,3400 ; Io. 1293.

Who are railway experts : Io.

(3) Upon petition filed in the chancery court, it is referred to the railroad commissioners with appeal to the chancellor : Ala. 1166—8.

The board may award or require security to either road for any balances : Me.

Such commissioners have also power to determine the times of connecting, etc., and make rules respecting the manner thereof : Vt. 1882,38 ; Ct.

In case such railroads cannot agree upon the terms, they may apply to the supreme court to appoint an impartial board of three referees who shall adjust and determine the rate and terms of such transportation and all matters relating to such connection : R.I. 1888,695,1.

The said commission shall have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads. If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers, or cars over their lines, the commission shall fix the *pro rata* part of such charges to be received by each of said connecting lines : Tex. 1891,51,3(e).

When it neglects, (1) the corporation owning the connecting road may draw its cars over such road with its own engines during such neglect, subject, while on such road, to its regulations for the management of its own trains. The corporation owning the connecting road shall furnish its own stations at the terminus of the other road, and be

liable for all injuries occasioned by such drawing of its cars; from which the other corporation is exempted: Me. 51,40; Mich. 3299.

(2) It is liable to a money penalty: Mich.

(3) It is punished as for contempt of court: Io. 1292,1296.

A company offending under the three preceding sections (§§ 8723, 8724), by refusing to receive, transport, or deliver freight or passengers is subject to a penalty of one hundred dollars for each offence to the corporation injured, to be recovered by an action on the case: Me. 51,130,133. Compare § 8834.

NOTE. — "Interstate Commerce Act; see § 8830.

**§ 8725. Contracts with Connecting Roads.** (For Leases, see § 8722.) Two railroad corporations created by this commonwealth, whose roads enter upon or connect with each other, may contract that either corporation shall perform all the transportation of persons and freight upon and over the road of the other: N.H. 157,14; Mass. 112,220.

Or may make lawful contracts in relation to its business or property: Ct. 3473; Pa. R.Rs. 134; Io. 1300; Tenn. 1262; Wy.<sup>a</sup> 562; Fla. 39,27.

It shall be lawful hereafter for any railroad corporation (in or out of the state, N.M.) to contract with any other (connecting, Pa., Ind., N.M.) railroad corporation for the use of their respective roads, and thereafter to use the same in such manner as may be prescribed in such contract (but not inconsistent with the provisions of the charter, Pa.): Pa. R.Rs. 119; Ind. 3999; N.M. 2665(15).

Such leasing road may fix the tolls: Pa.

And has general powers of repair and maintenance when the lease provides that the lessee shall repair: Pa. R.Rs. 120.

Any railroad may make contracts with railroads of other states connecting with it at the state line for the transportation of freight and passengers or for the use of its road: Ind. 3973; Dak. Civ. C. 463.

Any two or more railroad companies whose lines are connected (1) may perfect any arrangement for their common benefit, to assist and promote the object for which they were created: Mich. 3342; Ore. 3221; Wy. 554.

(2) May lease each other's railroad: Pa. R.Rs. 121; Wy.

Railroad companies in this state may make contracts and arrangements with each other and with railroads out of the state (or in Canada, Vt.) for leasing and running the roads or any part of the roads of either of them: Vt. 3303; Ill. 114,12.

Provided, that the facilities for travel and business on either of the roads of the said corporations shall not be diminished, and that the income arising from such contracts or leases shall be subject to the provisions of law in regard to the right of the commonwealth to purchase the roads or to reduce their tolls, in the same manner as that arising from the use of the roads: Mass. 112,220.

And the company or person owning or controlling any such trunk road shall not, by lease or otherwise, permit the same to be used or operated in any manner contrary to the foregoing provision: O. 3369.

Any company organized under this act may make any arrangement with any other railroad company, whether organized or incorporated under this act or any other act, for running its cars over the road of such other company, or for the working and operating of such other road as said companies shall mutually agree upon: Mich. 3342.

All companies owning or operating a spur or branch railroad, or making any such contract or agreement with connecting or intersecting lines of railroad, shall furnish cars, and transport freight over such spur, branch, or connecting road, at the same rates and subject to the same restrictions and regulations as shall be adopted for the transportation of freight upon the main line: Mich. 3342.

When any company organized under the general law shall be unable to finish, occupy, or operate its road, it may make arrangements with any other railroad company to equip, operate, manage, and work such road or section thereof, upon such terms as may be deemed just, and such time as may be agreed upon by the respective boards of directors: Mich. 3413.

Any such corporation which has constructed or may construct its railway so as to meet or connect with any other railway in an adjoining state at the boundary line of this state, shall have power to make such contracts and agreements with the corporations controlling such railways in an adjoining state, for the transportation of freight and passengers, or for the use of its railway by such foreign corporation, as the board of directors may see proper: Io. 1276.

The directors representing the stock held in the various railroad corporations are hereby authorized and empowered to enter into such agreements and terms with each other as to secure through freight and travel without the expense of transfer of freight or breaking the bulk thereof at different points along the lines, and for this purpose may use the road or roads of said corporations or companies, and rolling stock thereof, on such terms as may be agreed upon by the directors of said corporations or companies: N.C. 1995.

All railroad corporations may contract with each other, or with other corporations, in any manner not inconsistent with the scope, object, and purpose of their creation and management: Mo. 2588.

Any railroad company in this state shall have the power and authority to make and enter into contracts with any railroad company which has constructed, or shall hereafter construct, any railroad within this state or another state as will enable said companies to run their roads in connection with each other and to merge their stocks, to lease or purchase the stock and property of any other such company, and to hold, use, and occupy the same in such manner as they may deem most beneficial to their interests: Ga. 1689(o).

The roads of two railroad companies shall be deemed to enter upon or connect with each other, within the meaning of the last three sections, if one of such roads enters upon, connects with, or intersects a road leased to the other, or operated by it under a contract as authorized by said section: Mass. 112,221.

Railroads intersecting or crossing at grade shall be deemed, for all business purposes, connecting roads: Me. 51,127.

The provisions of law relating to the transportation of passengers and freight apply to and may be taken advantage of by any railroad in this state, whether it makes close connection with other railroads or not: Me. 51,131.

NOTE. — <sup>a</sup> Of north and south lines only: Wy. 563.

**§ 8726. Connecting Tracks.** (See also § 8744.) When a railroad [constructed since the eighth day of April in the year eighteen hundred and seventy-two, Mass.] meets another railroad terminating in or passing through the same city or town, or lawfully crosses another railroad at the same level therewith (or approaches within one mile of the other, N.J.), the corporation by which either of said roads is owned (**A**) may enter its road upon, or connect, unite the same with, and use the road of the other: Mass. 112,216; Vt. 3398; N.Y. 1887,724,6; 1890,565,4; N.J. Suppl. R.Rs. 7; Pa. R.Rs. 16; O. 3340; Mich. 1883,16; Wis. 1828 amt.; Io. 1292; Neb. 1,16,113; Wy. 562; Ga. 719(k); Fla.; N.M. 2665(6); Ariz. 313(6); Oka.; Ind. Ter.

(**B**) May cross, intersect, join, and unite this railroad with any other railroad,<sup>a</sup> either before or after construction, at any point upon its route, and upon the grounds of such other railroad company: N.Y.; Ind. 3903; Ill. 114,20; Mich.



3323 amt. ; Wis. 1828 ; Minn. 2505,2509 ; Kan. 23,47 ; W.Va. 54,50 ; N.C. 1957 ; Mo. 2543 ; Ark. 5533 ; Tex. 4175 ; Cal. 5465 ; Ore. 3240 ; Nev. 851 ; Dak. Civ. C. 460 ; 1879,46,9 ; Ida. 2666 ; Uta. 2333 ; S.C. 1887,410,2 ; 1885,96,5 ; Ga. 1689(i) ; Ala. 1165 ; Fla. 39,10 ; N.M. 2665(6) ; Ariz. 313(6) ; Oka. 1035 ; Wash. (Hill's Codes) 1571 ; Ind. Ter. (U.S.) 1890,1268. See §§ 8725,8744.

With the necessary turnouts, sidings, switches, and other conveniences : Vt., N.Y., Ind., Ill., Mich., Wis., Io., Kan., Neb., W.Va., N.C., Mo., Ark., Tex., Cal., Ore., Nev., Dak., Ida., Wy., Uta., Ga., N.M., Ariz., Wash.

And if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, it shall be determined (1) by special commissioners : Vt. ; N.Y. 1890,565,12 ; Pa. ; Mich. 1883,174 ; Wis. ; Kan. ; Neb. ; Ind. Ter.

(2) But the damages are determined as in ordinary cases of taking land : Ill. ; Ind. ; Mich. ; Wis. ; Minn. ; W.Va. ; N.C. ; Mo. ; Ark. 5534 ; Tex. 4177 ; Cal. ; Nev. ; Dak. ; Ida. ; Uta. ; Ga. 719(t) ; Fla. ; N.M. ; Ariz. ; Oka. ; Wash.

One road shall always pass over another at such crossing, where it can be done without injustice to either : N.Y., Mich.

Either may erect branch lines therefor, if the two railroads approach within one mile : N.J.

But only on the written consent of both companies : N.J.

And if the two corporations cannot agree as to the points and manner of such crossings, the district court to which the petition shall be presented shall at the time of the appointment of commissioners, upon the request of either party, and upon such showing as the court shall deem necessary and proper, prescribe the location and manner in which the crossing or connection shall be made so as to effect the purpose of the petitioning corporation, and at the same time do the least injury to the corporation whose property is taken : Minn. 2509.

Any such corporation may join, intersect, and unite its railway with the railway of any other corporation at such point on the boundary line of this state as may be agreed upon by such corporations : Io. 1275 ; Neb. 16,114 ; Col. 336.

Every company whose railroad is or shall [hereafter] be intersected by any other [or new] railroad, shall unite with the owners of such other railroads in forming such intersections and connections, and grant facilities for the same, as hereinafter provided : Ind. ; Ill. ; Mich. ; Wis. ; Kan. ; Neb. ; W.Va. ; N.C. ; Mo. ; Ark. ; Tex. 4176 ; Cal. ; Ore. ; Nev. ; Dak. ; Ida. ; Uta. 2333 ; Fla. ; N.M. ; Ariz. ; Oka. ; Wash. ; Ind. Ter.

But the road seeking such connection shall pay for the same : S.C. 1887,410,2.

And the older road shall not be required to change its location or grade : Fla.

On petition of either railroad, the commissioners may order interlocking signals, etc. to be placed at the crossing, and apportion the expense : Ill. 1891, p. 180.

All railroad companies incorporated or organized, or which may be incorporated or organized, as aforesaid, shall have the right of connecting with each other, and with the railroads of other states, on such terms as shall be mutually agreed upon by the companies interested in such connection : Ill. 114,43.

All railroads within this state which cross or connect with any other road, or which may hereafter be so constructed or built, shall permit the road so crossing or connecting to use their track or roadway for the passage of locomotives, cars, and tonnage at a rate of tolls for passage of trains and tonnage, not exceeding the rate per ton per mile, or proportionate part of a mile so used, as is charged for through freight per ton per mile ; provided, however, that the right of any road to use the track of any connecting road

under this section shall not be extended to a greater distance than five miles : Md. 23,183.

In every city or town of this commonwealth where two or more railroads do now or shall hereafter terminate, and said railroad company or companies shall make application to the corporate authorities thereof for permission to connect their roads within the corporate limits of said city or town, subject to the municipal regulations thereof; if the permission shall be refused, it shall be lawful for said railroad company or companies to make such connection outside of the limits of such city or town by the most direct and practicable route, and acquire land necessary for the purpose in the mode prescribed by the preceding sections of this chapter : Va. 1098.

Whenever two or more roads having the same gauge shall establish depots within three miles of each other, said railroads shall connect their tracks so as to admit of the passage of cars from the one railroad to the other with facility, and avoid the necessity of changing cars or transshipping, and shall be required to make connection at each of such depots without any extra charge. The expense of said connection to be borne by the railroad company last constructing their road : N.M. 2734.

**Restrictions.** But no locomotive engine or other motive power not owned and controlled by the corporation owning or lawfully operating the road shall be allowed to run upon a railroad except with the consent of such corporation : N.H. 157,11 ; Mass. 112,216 ; Vt. 3438.

But this shall not be construed as requiring any such corporation to give the use of its tracks or terminal facilities to another corporation in like business, nor as requiring any such corporation to form through routes or through rates with any other corporation : Ky. 1890,305,4.

In all cases where two railroads in this commonwealth are or shall be connected, it shall be lawful for the company owning either of the said railroads (with the consent of the company owning the other of said railroads) to run its cars and locomotive-engines upon the said other railroad, and to erect water-stations and other buildings for the due accommodation of the cars and engines employed thereon; provided, that nothing herein contained shall be construed or interpreted to release or exonerate any company owning a railroad from the obligation and duty which may be now imposed by existing laws, of transporting, subject to the rules and regulations of said companies, by locomotive steam-engines, the cars, whether loaded or empty, of all persons and companies who may require such transportation, over and along so much and such parts of their railroad as locomotive steam-engines shall be run upon, whether they be run by the company owning the road or by any other company : Pa. R.Rs. 118.

All railroads within this state which cross or connect with any other road, or which may hereafter be so constructed or built, shall permit the road so crossing or connecting to use their track or roadway for the passage of locomotives, cars, and tonnage at a rate of tolls for passage of trains and tonnage not exceeding the rate per ton per mile, or proportionate part of a mile so used, as is charged for through freight per ton per mile; provided, however, that the right of any road to use the track of any connecting road under this section shall not be extended to a greater distance than five miles : Md. 23,183.

Special provision is made for railways terminating on the boundary of the state or the Missouri River delivering their freight and passengers within the state and not without it : Io. 1311.

Special provision is made for connections of railways terminating in or near Council Bluffs : Io. 1310.

The provisions of the six preceding sections do not apply to railroads intersecting each other, and having a common terminus as to freight and passengers between the place of intersection and such terminus : Ala. 1172.

NOTE. — a " Before constructed : " Ind., Ill., Mo., Tex.

§ 8727. **Joint Tracks.** Whenever two railroad companies, for a portion of their respective lines, embrace the same location (or whenever their lines connect or are tributary to each other, N.Y.) they may by agreement provide for the construction by one of said companies of so much of said line as is common to both or connects with its own line, and for the manner and terms upon which business thereon shall be performed: N.Y. 1890,565,15; Mich. 3349; N.C. 1983.

And the road actually constructing may receive the town bonds, etc. subscribed: N.Y.

And the road may change its location, and reduce its capital accordingly: N.Y., N.C.

Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line (or whenever, by the connection of two or more railroads, the same points of termination are reached by railroad communication), any two railroads may, by agreement, provide for the construction of so much of said line as is common to both of them by one of the companies, and for the manner and terms upon which the business thereon shall be performed. Any road so connecting may alter and amend its articles of association so as to terminate at the point of intersection, and may reduce its capital to a sum not less than eight (five, N.C.) thousand dollars for each mile of the road constructed, or proposed to be constructed in such amended articles of association: Mich. 3349; N.C. 1983.

Any railroad corporation in this state may make such contracts with the owner or operator of any constructed railroad terminating on the eastern shore of Lake Michigan, within the state of Michigan, as will enable the operation of their respective roads in connection with each other in such a manner as they shall deem most beneficial to their interests; and they may build, construct, and run as a part of their corporate property such or so many steamboats and vessels as they deem expedient to facilitate their mutual business operations: Wis. 1834.

#### **Art. 873. Consolidation.**

§ 8730. **When Allowed.** (A) In any case where two or more railroad companies shall have been, or shall hereafter be, organized under the laws of this state, the whole of whose lines, as located by them respectively, shall form one continuous and connecting line of road (or by means of any intervening road, N.J. 1890,175), the said companies may consolidate their lines of roads, stock, franchises, and property according to the existing laws of this state relating to the consolidation of railroad companies: N.J. Suppl. R.Rs. 68,53; Pa. R.Rs. 83; O. 3379; Neb. 1,16,89; Mo. 2567; Wy. 550.

And any such consolidated company may thereupon construct or finish the construction of such continuous line of railroad, and operate the same subject to all provisions of law applicable to railroad corporations organized under the said laws, so far as not inconsistent with this act; but this act shall not in any manner affect the existing laws regulating the rate of fare on any railroad: N.Y.

And any special rights as to taxation must be surrendered: N.J.

(B) Any railroad companies organized under the law of this or (except in O., Ind., Mich., Tenn., Wy.) any other state, operating a railroad or bridge wholly or partly within the state, may consolidate its stock, franchise, and property with that of any other railroad company in or out of the state (1) whenever the railroads or branches, or any part of them, form a continuous or connecting line with each other: N.Y. 1890,505,70; Pa. R.Rs. 79,91; O. 3380; Ind. 3951,3971,3975; Mich. 3343; Wis. 1833; Minn. 2537; Kan. 23,111; Md. 1890,553; W.Va. 54,53; Ark. 5511; 1887,80; Col. 353; Dak. Civ. C. 468; Mon. G. L. 703; Uta. 1890,33; S.C. 1425; Ga. 1689(z); Ala. 1580; Fla. 39,27; N.M.<sup>b</sup> 2702; Oka. 1041.

Or by means of any intervening railroad: N.Y.; Pa. R.Rs. 91; Col.; S. C.

Or bridge : N.Y., Col., S.C.

Or ferry : N.Y., O., S.C.

(2) In any case : N.J. Suppl. R.Rs. 20, Tenn. 1887,188; Ark. 5452; Cal. 5473; Nev. 874; Col. 349; Wash. 1890, p. 526; Ida. 2673; 1891, p. 125; Mon. G. L. 680; Wy.<sup>a</sup> 562; 1890,18; S.C. 1885,96,5; Ga. 1689(o); N.M.<sup>b</sup> 2665(19); Ariz. 317.

(3) When the roads either connect or intersect : Tenn. 1263.

A corporation may consolidate with another of any adjoining state : Ark. 5516; 1887,80. See also (B), above.

A railroad incorporated under the laws of the state for the purpose of building and operating a railroad within the state extending to or beyond the boundary line, may consolidate its stock, franchises, and property with that of any other railroad company whose line, built or to be built, is situated wholly outside the state, when such railroads form one continuous line from some point in this state to some point in an adjoining state; but not in Connecticut, if the aggregate outstanding bonds of both companies exceed one half of what has actually been expended upon the railroads; the amount of the same to be certified to the said comptroller by the written statement under oath of the president and treasurer of each company and of an engineer approved by the railroad commissioners. And no railroad companies shall be consolidated under this provision whose railroads, built or to be built, run a parallel or competing line : Ct. 3443; Neb. 16,114.

A railroad may purchase, and hold stock and bonds in, and lease or become consolidated with, canals and navigation companies in the same manner as other railroads, and *vice versa* : Pa. R.Rs. 90.

Companies already consolidated may increase their stock and bonds under the same limitations, provided they accept the new constitution : Pa. 1889,223,2.

Whenever two or more railroads have been or shall hereafter become associated in jointly making or running their roads under any contract, and desire to assume one common name, they may do so by vote of both boards of directors; and thereafter shall be consolidated : Ind. 3965-6.

So, with any railroad already built from the state line to a point of intersection : Ind. 3967.

Such connection may be made by vote of both boards of directors : Ind. 3968.

Such railroad so connecting shall not be required to complete its own road to the state line so long as it shall be thus associated with the company owning said other road; but its franchises to build it shall remain unimpaired : Ind. 3969.

In Illinois there is no general provision for the consolidation of railways, but there are two statutes, one of June 14, 1883, providing for the consolidation of corporations existing in Illinois and in other states, which have been formed in consequence of a judgment for foreclosure against the original railroad, and have been bought as an entirety in either state, and are now held or may hereafter be held in the name of two or more corporations incorporated respectively in the several states, with the approval of two thirds of the stockholders, after sixty days' notice, etc.; but no consolidation shall take place with any railroad owning a parallel or competing line; and a majority of the directors of the consolidated company must be citizens and residents of Illinois, with various other restrictions : Ill. 114,39-41.

And there is another statute of June 30th, 1885, providing for the consolidation of railroads which are already actually in the possession of, or operating other railroads, with such railroads so owned or operated, in Illinois and in other states, by agreement of two thirds of the stockholders of each company after due notice. Provided, that no railroad may thus purchase or consolidate with a line which is parallel or competing with any line already owned or operated, and such consolidated companies are given

various powers of issuing bonds and increasing stock to improve the road, etc. Provided, that nothing in this act shall authorize any corporation not organized in Illinois, to purchase, own, or lease any railroad within it : Ill. 114,196,197.

Railroads terminating on the banks of any river, which are or may be connected by ferry or otherwise, shall be deemed continuous under this act : Pa. R.Rs. 79 ; O. 3380 ; N.M. ; S.C. See also (B) above.

Nothing in this act contained shall be taken to authorize the consolidation of any company or corporation of this commonwealth with that of any other state whose laws shall not also authorize the like consolidation : Pa. R.Rs. 79 ; S.C.

**Restrictions.** But no railroad corporation shall consolidate with, or lease or purchase, or in any way become owner of, or control any other railroad corporation, or any stock, franchises, rights or property thereof, which owns or controls a parallel and competing line : Wis. 1833 ; Minn. 2538 ; Mo. 2569 ; Ark. 5514 ; 1887,81,2 ; Tex. 4246 ; Ariz. 318.

To be determined by a jury : Wis., Ark.

Having the same terminal points within the territory : Ariz. See § 8721 ; and compare § 8730,B.

So, no such companies owning parallel or competing lines shall be permitted to consolidate themselves into one corporation : Ct. ; N.Y. 1890,565,80 ; Mich. 3343 ; Md. ; W.Va. 54,53 ; Col. 352 ; Ill. 114,23 ; Tenn. 1887,188 ; Mo. 2567 ; Ark. 1887,80,1 ; Wash. ; Uta. ; Fla. 1887,3745.

Except by consent of the legislature : W.Va., Md. Of the railroad commission : Fla.

And shall be subject to all the restrictions and perform all the duties imposed by the provisions of their respective charters or laws of organization : Mich. 3343.

Railroads organized in the state may not consolidate with any corporation out of the state without the consent of the legislature : N.J. Suppl. R.Rs. 91.

But this section (as to branches, etc., § 8710) shall not be construed to authorize any railroad corporations to consolidate with each other : Wis. 1831.

Provided, further, that nothing in this act shall be so construed as to authorize the issuance or sale of any stock or bonds by any such company, or the performance of any act prohibited : Minn. 2537.

In case any such railroad companies shall consolidate or attempt to consolidate their roads contrary to the provisions of this article, such consolidation shall be void, and any person or party aggrieved, whether stockholder or not, may bring action against them : Mo. 2567.

No railroad company organized under the laws of this state shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other state or of the United States : Tex. 4247.

Provided, that no railroad shall purchase a competing line of railroad, or enter into any contract with a competing line of railroad calculated to defeat or lessen competition in this state : Ga. 1689(o).

NOTES. — <sup>a</sup> See § 8725, note <sup>a</sup>. <sup>b</sup> There are two different statutes.

§ 8731. **Method.** (A) Such consolidation must be by joint agreement of the directors (Cal. 5473 ; Ida. 2673 ; Nev. 874 ; N.M.), prescribing the terms and conditions thereof, (the mode of carrying the same into effect, the name of the new corporation, the number and names of its directors and other officers,<sup>b</sup> and who shall be the first directors and officers, the number of shares of the capital stock and the par value, Ct., N.Y., Pa.,<sup>a</sup> O., N.J., Neb., Col., Ala., N.M., N.M., Mich., Dak., Mon., Wy., S.C.) and the manner of converting the capital stock of each constituent company into that of the new corporation, and how and

when officers shall be chosen, with such other details as they shall deem necessary : Ct. 3444 ; N.Y. 1890,565,71 ; N.J. Suppl. R.Rs. 60,54 ; Pa. R.Rs. 74,79,80 ; O. 3381 ; Mich. 3343 ; Neb. 116,89 ; Col. 354 ; Wy. 550 ; Dak. Civ. C. 468 ; Mon. G. L. 703 ; Uta. 2361 ; S.C. 1426 ; Ala. 1583 ; N.M. 2703.

The manner of compensating stockholders in each of the old corporations who refuse to convert their stock into the stock of the new corporation : Wy. 550 ; Ala. ; Neb.

(B) Such consolidation is made by agreement of the directors of each company describing the conditions, the new name, and the new directors, amount of stock and method of conversion, with other details : Ct. 3444 ; Tenn. 1264 ; Ark. 5452 ; Ida. 1891, p. 125 ; Oka. 1041.

(C) "The companies enter into a contract fixing the terms and conditions thereof : N.H. 156,23 ; Wis. 1833 ; Minn. 2537 ; Mo. ; Kan. 23,111 ; Ark. 5512,5517 ; Uta. 2361.

Railroad companies consolidating, being neither parallel nor competing lines, may specify in the agreement what amount of capital stock and bonds of the consolidated company shall be issued to the stock and bond holders of the companies consolidating, in exchange for their stock and bonds previously held. The amount may be in excess of the amount of the authorized issues of the companies consolidating, but shall not be in excess of the actual value of the property and franchises vested in the consolidated corporation, nor more than one hundred and fifty thousand dollars of stock and one hundred and fifty thousand dollars of bonds per mile of railroad ; and if such amount is in excess of the aggregate amounts of stock and bonds authorized and outstanding of said companies, the president and principal engineer of the company must make oath to such cash value, being equal to the amount of stock and bonds so issued : Pa. 1889, 223,1.

Any railway company of this state, empowered by the laws thereof to consolidate its railway property and franchises, or any portion thereof, with the railway property and franchises, or any portion thereof, of another railway company, or to purchase the railway property and franchises, or any part thereof, of another railway company, may effect such consolidation or purchase by acquiring the stock, bonds, or other securities of such other railway company : Minn. 2537.

And for the special purpose of acquiring the same may create, issue, or dispose of its own stock, bonds, or other securities, in addition to the amounts of the same it is otherwise empowered to issue, to an amount not exceeding the actual value of the stock or bonds of such other company acquired by it : Minn. 2537.

In case of such consolidation "Articles of Incorporation and Consolidation" must be prepared, setting forth, 1st, the name of the new corporation ; 2d, the purpose for which it is formed ; 3d, the place where its principal business is to be transacted ; 4th, the term for which it is to exist, which shall not exceed fifty years ; 5th, the number of its directors (which shall not be less than five nor more than thirteen), and the names and residences of the persons appointed to act as such until their successors are elected and qualified ; 6th, the amount of its capital stock, (which shall not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers,) and the number of shares into which it is divided ; 7th, the amount of stock actually subscribed, and by whom ; 8th, the termini of its road or roads and branches ; 9th, the estimated length of its road or roads and branches ; 10th, that at least ten per cent of its subscribed capital stock has been paid in ; 11th, the names of the constituent corporations, and the terms and conditions of consolidation in full : Ariz. 317 ; N.M. 2665(19).

Before the agreement shall have any force or effect, (1) the articles of consolidation shall be submitted to a board, consisting of the attorney-general, commissioner of railroads, and secretary of state, to be examined by such board, to ascertain whether

the proposed consolidation will be in accordance with the constitution and laws of this state, and if found in accordance therewith, said board shall approve the same : Mich. 3344.

(2) The stockholders so voting must apply to the Supreme Court, which may, after notice and hearing, authorize it "if the public good will be promoted by such union : " N.H. 156,22.

NOTES. — <sup>a</sup> Under Pa. R.Rs. 79 ; i.e., when one of the consolidating companies is in another state. <sup>b</sup> Which shall not be less than seven : Wy., Dak. ; not more than thirteen : Ala. ; five to fifteen : Mich.

§ 8732. **Ratification by Stockholders.** Such agreement must be submitted to the stockholders at a special meeting <sup>b</sup> (called separately, Pa., N.J., O., Mich., S.C., N.M.) after due notice of the purpose thereof; and the agreement of the directors must be ratified (1) by a two-thirds vote of all the stockholders : N.H.<sup>c</sup> 156,22 ; Ct. 3445 ; N.Y. 1890,565,71 ; N.J. Suppl. R.Rs. 60 ; Pa. R.Rs. 80 ; O. 3381 ; Kan. 23,111 ; Neb. 16,90 ; Ark. 5512 ; Dak.<sup>c</sup> Civ. C. 469 ; Uta. 2361 ; Ga. 1689(z) ; Ala.<sup>c</sup> 1583 ; 1887,114 ; N.M. 2703 ; 1891,122.

(2) By a majority of the votes cast : N.J.<sup>c</sup> Suppl. R.Rs. 54 ; Pa.<sup>d</sup> R.Rs. 74 ; Mich. 3343 ; 1891,122 ; Wis.<sup>b</sup> 1883 ; Minn. 2537 ; Md. 1890,523 ; Mo. 2567 ; Col.<sup>a</sup> 354 ; Dak. 1879,46,13. Of all the stock : Neb.<sup>a</sup> 16,114 ; W.Va. 54,53 ; Tenn.<sup>b</sup> 1265 ; 1887,188 ; Ark. 5452 ; Wash. 1890, p. 527 ; Ida.<sup>b</sup> 1891, p. 125 ; Wy.<sup>b</sup> 1890,18 ; S.C. 1426 ; Oka.<sup>b</sup> 1041.

(3) By three fourths of all the stock of each company : Cal. 5473 ; Nev. 874 ; Col. 349 ; N.M.<sup>e</sup> 2665(19) ; Ariz. 317. So three fifths : Mon. G. L. 703.

Or by mere consent in writing of such majority : Kan., W.Va., Wash., Ida., Ariz., Oka.

And filed with the secretary of state : N.H. ; Ct. ; N.Y. ; N.J. ; Pa. ; Mich. ; Wis. ; Minn. ; Kan. ; Neb. 116,91 ; Md. ; Tenn. 1266 ; Mo. ; Ark. 5515 ; Cal. ; Nev. ; Col. 349,355 ; Wash. ; Dak. Civ. C. 470 ; Ida. ; Mon. ; Wy. 551 ; Uta. ; S.C. ; Ga. ; Ala. 1584 ; N.M. ; Ariz. ; Oka.

And notice given of such consolidation by publication : Cal. ; Nev. ; Col. 352 ; Ida. ; Uta.

Sixty days' notice, &c., as in case of increase of stock (§ 8611) : Ill. 114,23 ; Mo. Ninety days : Dak. Thirty days : Uta.

Said certificate and copy of agreement so to be filed in the office of the secretary of the commonwealth shall be evidence of the lawful holding of such meetings, and of the consolidation of said companies, and of the said merger : Ct. ; N.Y. ; N.J. Suppl. R.Rs. 60,55 ; Pa. R.Rs. 75 ; O. 3391 ; Mich. 3343 ; Wis. 1833 ; Mo. ; Uta. ; S.C. ; N.M.

If any stockholder shall object to such consolidation, he may apply to the court of common pleas, within thirty days after execution of the consolidated agreement, to appoint three appraisers to estimate the damage done to such stockholders by said proposed consolidation, whose award shall be final; and they shall also appraise the shares of said stockholders at the full market value, without regard to any depreciation in consequence of the said proposed consolidation ; and the company may either pay the amount of damages so found or the value of stock so ascertained, and thereupon said stockholders shall transfer the stock to said company to be disposed of by the directors or retained for the benefit of the remaining stockholders : N.J. Suppl. R.Rs. 66 ; Pa. R.Rs. 75,86 ; S.C. 1432.

So the actual value, taking into consideration earning capacity without reference to such consolidation, is to be paid him. If he cannot agree with the directors as to such value, it is referred to arbitrators as above : O. 3388 ; 1890, p. 159.

So at least the market value of their stock must be paid, if they so require, previous to consummation of the consolidation: Neb. 1,16,89; Dak. Civ. C. 468. The actual value: Ala. 1891, p. 971. The appraised value: Wy. 550.

Executors, guardians, and trustees may assent to consolidation agreements for stock represented, and accept the stock or bonds exchanged therefor under the same trust: Pa. R.Rs. 92.

Provided, if the mode of ratifying said agreement of consolidation in such other state shall vary from that herein prescribed, it may be ratified by the railroad in such other state according to the laws thereof: Col.<sup>a</sup> 354; Uta. 2361.

NOTES. — <sup>a</sup>In cases of consolidation with a railroad meeting it at the state line only. <sup>b</sup>Or at a regular annual meeting. <sup>c</sup>Of all *present* only. <sup>d</sup>In case both companies are organized within the state. <sup>e</sup>There are two different statutes authorizing consolidation.

§ 8733. **Special Cases.** Any railroad may purchase or consolidate with any railroad meeting it at the state line with consent of three fourths of the stock: Io. 1275.

So, two thirds: Ark. 1889,34. See also § 8730.

**Special provision** is made for the consolidation of railroads partly constructed on the same location: W.Va. 1889,23.

§ 8734. **Effect and Liabilities.** The consolidated company possesses all the rights, property, privileges, and franchises theretofore vested in either of the companies consolidated severally: N.H. 156,23; Ct. 446; N.Y. 1890,565,72; 1891,362; N.J. Suppl. R.Rs. 62,55; Pa. R.Rs. 75,81,82; O. 3384,3382; Mich. 3343,3344; 1891,122; Kan. 23,111; Wis. 1833; Minn. 2537,686; Neb. 1,16,89 & 114; Tenn. 1268; Mo. 2567; Ark. 5511; Col. 355; Wash. 1890, p. 526; Dak. Civ. C. 468; Ida.; Mon. G. L. 703; Wy. 550; Uta. 2362; S.C. 1427; 1885,96,6; Ala. 1583,1585; N.M. 2665(19),2706; Ariz. 317; Oka. 1041.

Without any other deed or act of transfer: N.Y.; N.J.; Pa.; O.; Mich.; Neb. 1,16,92; Col. 356; Dak. Civ. C. 471; Wy. 552; Uta. 2363; S.C. 1428; Ala. 1585; N.M.

And so, it appears, in: Ind. 3966,3970.

But only after election of a new board of directors: O., Minn., Neb., Wy., Ala.

Subject to the provision that it shall not confer upon any railroad company any power or privilege not given by law to all railroads organized under the general law: Ct., Tenn.

And subject to all the restrictions, disabilities, and duties of each of the corporations consolidating: N.H.; N.J. Suppl. R.Rs. 61; Tenn.; Mo.; Col.; Uta.; N.M.; Ariz.; Oka.

Or by the general railroad act: Ala. 1891, p. 970; Ariz.

Provided that all rights of creditors and all liens upon the property of either of said corporations shall continue unimpaired, and the respective corporations may be deemed to be in existence to preserve the same; and all debts, duties, and liabilities of either of said companies (except mortgages, N.M.) shall (except in Nevada) thenceforth attach to the consolidated company, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it: N.Y. 1890,565,73; N.J. Suppl. R.Rs. 62,55; Pa. R.Rs. 75,82; O. 3384; Mich. 1891,122; 3344 amt.; Minn. 2537; Neb. 1,16,92; W.Va. 54,53; Ark. 1889,55; Nev. 874; Col. 356; Dak.; Wy. 552; Uta. 2363; S.C. 1428; Ala. 1585; N.M. 2707; Ariz.

So, the rights of creditors of the consolidating corporations shall in no wise be affected or impaired: Ct.; N.Y. *ib.* 5; Tenn. 1267; Cal. 5473; Ida. 2673.



"The consolidated company is hable for all debts, etc. of the companies consolidating:" Ark. 1889,55,1; Col.; N.M. 2705; Ariz.

And their contracts remain unimpaired: Ark. 5511; N.M.; Ariz.

After such lease or consolidation the company or companies so acquiring said stock, property, franchises, and road may use and operate such road and their own roads, or all or any of them, and transport freights and passengers over the same, and take compensation therefor, according to the provisions and restrictions contained in this act (notwithstanding any special privilege heretofore granted or hereafter to be granted to another corporation for the transportation of freights and passengers between any points on the lines of said roads, or any other points within or without this state, N.J.): N.J. Suppl. R.Rs. 20; N.M. 2665(19).

Provided, however, that nothing in this act shall authorize any railroad companies, incorporated under a special act of the legislature, to charge for transportation of freight or passengers over the roads constructed under the said special act more than they may be authorized to charge by the provisions of their respective acts of incorporation: N.J. RRs. 105.

When such railroad lies partly in and partly without the state, and has been purchased under mortgage sale of the consolidated property of either of said companies, and when said foreclosure was carried on separately in the different states, the new company shall be taken and considered to be one company in law and in fact: N.J. Suppl. R.Rs. 70.

Six of its directors must be citizens of the state: Ct. 3449; and see § 8532.

Whenever any merger or consolidation of two or more railroad companies shall have taken place or been made by virtue of any act of assembly of this commonwealth prior to the sixteenth day of May, 1861, the company into which such merger shall have taken place shall have all the powers and authorities and be subject to all the duties and liabilities conferred upon railroad companies into which such merger shall have been made under and by virtue of the act passed May 16, 1861, entitled "An Act relating to railroad companies," and the several supplements thereto, regulating the conditions and restrictions upon which such consolidation and merger shall be made: Pa. R.Rs. 87.

Consolidating companies may specify in the agreement what corporate rights, powers, obligations, duties, and franchises created by the charter or by any law relating to their company shall be transferred to and continue in the new company. The said consolidated company shall be subject only to such of them as are so specified, and such agreement shall thereupon be deemed its act of incorporation, provided that the consolidated company shall not thus acquire any powers or franchises that were not theretofore granted to either of them; notice of any such merger must be given by publication to the stockholders of the respective companies, and shall not be valid until ratified by them as in [§ 8732]: Pa. R.Rs. 89.

Provided, however, that any power, right, franchise, privilege, or immunity possessed by either or any of the consolidating companies of a kind which would not be possessed by a company organizing originally under the provisions of this act as now existing or as hereafter amended, shall be utterly lost, annulled, and abrogated; and such new corporation shall be subject to all the restrictions and perform all the duties imposed by this act as now existing or as hereafter amended as if it were a corporation originally organized thereunder: Mich. 1891,122,1.

The trustees or directors of the consolidating companies shall each by proper conveyance convey to the consolidated company the property and effects of such companies; and shall deposit with the new directors all the books and records: Col. 349.

The directors of the consolidated company shall call in all the stock of each of the consolidating companies, cancel the same, and issue in lieu thereof stock of the new company in proportion of value of the old to the new, as provided in the plan: Col.

349 ; Ark. 5514. Thereafter the stock shall represent only the interest of each company in the new organization, whether surrendered and exchanged or not : Col.

The board of directors of the several companies may then proceed to carry out such contract according to its provisions, calling in the certificates of stock outstanding in the several companies or roads, and issuing certificates of stock in the new consolidated company under such corporate name as may have been adopted : Mo. 2567.

Suits may be brought against such company in any court of the state in the same manner as against other railroad companies : N.Y. ib. 5 ; N.J. Suppl. R.Rs. 64 ; Pa. R.Rs. 84 ; O. 3386 ; Col. 358 ; Uta. 2365 ; S.C. 1430 ; N.M. ; Ct. 3449 ; Ark. 1887,80.

And such consolidation with a railway out of the state shall not make it a foreign corporation : Col., Ark.

Nor affect pending suits : Col. 351.

Provided, further, that all such corporations shall be subject to the laws of this state, and the jurisdiction of the courts of this state, in the same manner and to the same extent as domestic corporations : Minn. 2537 ; Ark. ; Wash. 1890, p. 528 ; Ala. 1583 ; Ga. 1689(z).

The portion of the road of such company in the state and its other property shall be taxed like that of other railroads : Ct. 3446 ; N.Y. 1890,565,74 ; Pa. R.Rs. 85 ; N.J. Suppl. R.Rs. 65 ; O. 3387 ; Col. 359 ; Uta. 2366 ; S.C. 1431 ; Wy. 1890,18.

And the rolling stock shall be taxed in the state in proportion to the relative length of line therein and elsewhere : O.

No exemption from taxation contained in a railroad charter or other railroad laws shall be transferred to or conferred upon such consolidated company : N.J. Suppl. R.Rs. 92 ; Tenn. 1270 ; Ga. 1689(dd).

§ 8735. **Organization of New Company.** The new directors must prepare a certificate of incorporation setting forth forthwith the facts of consolidation, with all matters required in an original certificate of incorporation, naming therein the directors elected as herein provided, who shall serve for one year; and said certificate must be signed (1) by at least three of the stockholders of each of the consolidating companies : Col. 349.

(2) By the presidents and secretaries of each company and three fourths of the stockholders : N.M. 2665(19) ; Ariz. 317.

Said new company shall establish an office on the line of its road within the state : Pa. R.Rs. 83 ; N.J. Suppl. R.Rs. 63 ; O. 3385 ; Col. 357 ; Uta. 2364 ; S.C. 1429 ; Ala. 1583.

But this section and the other laws of this state respecting the residence of directors of corporations, and the keeping of a principal or general office and the records of corporations, shall not apply to consolidated railroad companies formed by the consolidation of a railroad company or companies created by or existing under the laws of this state or any other state or states with a railroad company or companies of this state or of any other state; and the election for directors of such consolidated railroad companies may be held at the principal office of the company, whether located in this state or in any other state under the laws of which the said consolidated railroad company may have been created; provided, however, that at least two of the directors of such consolidated railroad company shall be residents of this state, and that a general office of the company shall be maintained at some place within this state, of which notice shall be given as aforesaid : O. 1890, p. 184.

Upon consolidation, the trustees or directors shall elect their proportion of the directors, less one, for the consolidated company, and upon joint meeting of such directors they shall elect one of the stockholders to be the other : Col. 349.

The new company may also fix the number of its directors, the number and duties of its officers, pass by-laws, etc. : Tenn. 1269. Its capital stock at \$100 per share : Tenn.

Not less than six directors must always be citizens of the state : Ct. 3449.

It may adopt a new name ; and so "when it purchases all the stock of another company and thereby becomes responsible for the liabilities thereof" : Fla. 39,37.

And do all other things which the companies consolidating might have done (but see § 8734) : Tenn.

**§ 8736. Powers of the New Company.** The capital stock of the consolidated company may not exceed the sum of the stock of the companies consolidated : N.H. 156,26 ; Ct. 3444 ; Pa. R.Rs. 75 ; Ark. 5452 ; N.Y. 1890,565,71 ; Dak. 1879,46,13 ; Wash. 1890, p. 527 ; Col. 349 ; Ida. 1891, p. 126 ; Oka. 1041. "Actually issued and paid for at par." N.H. Nor shall any bonds or other evidences of debt be issued for a consideration for or in connection with such consolidation : Ct., N.Y., Dak., Wash., Ida., Oka.

In case of any differences or inconsistencies of any nature between the acts regulating said companies respectively, then the said consolidated company shall, in all respects, be regulated by the laws then governing and applicable to that company into which such merger may have been made : Pa. R.Rs. 75 ; N.J. Suppl. R.Rs. 55.

The corporation into which such merger shall be made shall have power and authority to make such increase in its capital stock and shares as may be expedient in carrying such consolidation and merger into effect ; provided, however, that such increase shall not be more than twenty per centum greater than the aggregate amount of the capital stock and shares of the corporation so consolidated and merged : N.J. Suppl. R.Rs. 56.

It shall be lawful for the corporation into or with which one or more railroad corporations have been merged or consolidated, with the consent of the stockholders owning or controlling two thirds in value of the capital stock of such corporation, to increase its capital stock to such an amount as shall be deemed expedient or necessary by the directors of such company for the uses and purposes of such company : N.J. 1887,48.

Any consolidated railroad company may take, hold, pledge, or otherwise dispose of, under such terms and agreements as the board of directors of such consolidated railroad company may prescribe, the stock and bonds of any other company acquired upon consolidation or received by virtue of any purchase or lease, or operating contract, heretofore or hereafter made or executed, and may maintain or operate any railroad purchased under authority of law, and may lease or contract to operate any part or all of a railroad constructed or in course of construction by another company of this state or of any other state, if the line of road covered by such lease or operating contract is connected with the line of road of such consolidated railroad company, upon such terms as may be agreed upon between the companies : O. 1890, p. 183.

Whenever any consolidated railroad company, described in the next preceding section of this act, is in possession of or operating, in connection with or extension of its own railroad line or lines, any other railroads or railroad in this state or in any other state or states under any purchase, conveyance, lease, contract, or agreement, such consolidated railroad company may take a surrender or transfer of the whole or any part of the capital stock of the company conveying, leasing, or owning such railroad from any one or more stockholder or stockholders, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon by the directors of the consolidated railroad company ; and whenever the whole of the said capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state, under the common seal of the consolidated railroad company to whom such sur-

surrender or transfer shall have been made, the estate, property, rights, privileges, and franchises of the said company whose stock shall have been so surrendered or transferred shall thereupon vest in and be held and enjoyed by the said consolidated railroad company to whom such surrender or transfer shall have been made, as fully and entirely and without change or diminution as the same were before held and enjoyed, and be managed and controlled by the board of directors of the said consolidated railroad company to whom such surrender or transfer of the said stock shall have been made, and the two companies shall thenceforth be consolidated and be one company under the corporate name of such consolidated railroad company, without any other formalities or proceedings whatever. The rights of any stockholder not so surrendering or transferring his stock shall not be in any way affected hereby, nor shall existing liabilities or the rights of creditors of the company whose stock shall have been so surrendered or transferred be in any way affected or impaired by the provisions of this section : O. 1890, p. 183.

Nothing in this chapter contained shall be construed to impair the right which any railroad corporation has to unite with another corporation, or to become a party to a contract for the lease of a railroad : N.H. 156,43.

If a stockholder in a railway which has voted to build an extension or branch, or has become a party to a lease or consolidation under the provisions of this article, or articles 872 and 873, who dissents from the building of such extension or branch, or from such lease or union, may apply by petition to the supreme court to determine the value of his stock, interest, or property right, and after a hearing the judge so determines, and the railroad company must pay the sum so ruled to the stockholder : N.H. 156,28-33.

The new corporation shall not divide to its stockholders in dividends a greater sum than the aggregate sum which the uniting corporations together were authorized to divide to their stockholders : N.H. 156,27.

Until stock of the new corporation has been issued to assenting stockholders, they shall have the right to vote in meetings of members of the new corporation as if stock had been issued to them according to the agreement of union : N.H. 156,25.

The first meeting of the new corporation shall be called by the presidents of the corporations which united to form it : N.H. 156,24.

A corporation may hire money to settle with its dissenting stockholders, provided its indebtedness is not thereby increased beyond the limit authorized by law : N.H. 156,40.

**§ 8737. Bonds and Debt.** The consolidated company may issue bonds and mortgage its property and franchises : Ct. 3447 ; N.Y. 1891,362 ; N.J. Suppl. R.Rs. 57,67 ; Pa. R.Rs. 77 ; Tenn. 1269 ; and exchange such bonds for the debts of the respective companies consolidated : N.Y. ; N.J. ; Pa. ; Col. 356 ; provided the total amount so issued shall not exceed the whole of the debts of such companies (and twenty per cent additional, N.J.), and not at a rate of interest of more than (1) seven per cent : N.J. Suppl. R.Rs. 57 ; Pa.

(2) Six per cent : N.J. Suppl. R.Rs. 67.

And bonds may be issued by the new company for any purpose, and to the amount authorized by the laws of the state where either consolidating company was organized ; provided, in all cases, the consent of the stockholders be given as required by law (§ 8641) : N.Y. 1891,362.

Said consolidated company may issue bonds, and secure the same by a mortgage of its entire franchises and property, both within and without this state, existing or to be acquired, or any part thereof, to one or more trustees, to be nominated by said company and approved by the governor of this state ; and said mortgage may provide for a foreclosure or sale of the entire road and franchises in both states, in case of a default upon

the bonds, by judgment or decree of a court of competent jurisdiction in this state : Ct. 3447.

The bonds so issued may be given in exchange or satisfaction for all bonds, debts, or claims against the consolidated companies, upon such terms as may be agreed upon : N.Y., N.J., Pa. R.Rs. 78.

When the bonded debt of the consolidating corporations is unequal in amount, or one of them has no such debt, such corporation having the lesser bonded debt, or no debt, may receive in preferred stock of the new company, or in bonds secured by mortgage thereof, an amount not exceeding one half of its capital stock in lieu thereof, and in exchange for an equal amount of its own capital stock theretofore issued, which shall be cancelled. The amount of said preferred stock or bonds shall be fixed by a vote of two thirds of the stockholders of the consolidated corporation, or of the several consolidating corporations. Such consolidated company may issue bonds, or preferred stock, if by two-thirds vote of the stockholders, for said purpose, to an amount not exceeding one half of the authorized capital of such consolidated corporation : N.J. Suppl. R.Rs. 58,59.

Railroad companies of other states that have been consolidated with companies of this state may borrow money to finish, extend, and equip the road, and issue mortgage bonds therefor at a rate of interest not exceeding six per cent : N.J. Suppl. R.Rs. 71.

Such two consolidated companies must keep their lines supplied with sufficient rolling stock. They shall not discriminate against the business of either : Neb. 1,16, 93 ; Dak. Civ. C. 472.

§ 8738. **Remedies.** "When, in pursuance of the act to which this is a supplement, any railroad shall make, or has made, a contract with any other railroad company chartered by another state, but authorized by law to extend its road into this state, by which it shall obtain a right to connect the roads of the two companies, or run its cars and engines thereon, or on any other railroad, it shall not be lawful for any person in any manner, or by color of any authority, to interfere with or interrupt the enjoyment of said right, according to the terms of the contract, until the right so to interfere shall be finally established by the highest judicial tribunal of the state in which the railroad, for the use of which the contract was made, is located : " Pa. R.Rs. 100.

If any railroad company shall be interfered with contrary to the provisions above, and thereby prevented from enjoying the rights stipulated for in such contract, it may apply to the supreme court for an injunction against the railroad company with which the contract was made, and all other persons from exercising any corporate privileges, or from using its own railroad, until further order : Pa. R.Rs. 101.

Said injunction may be continued so long as the interruption or injunction complained of continues : Pa. R.Rs. 102.

## **Art. 874. Location.**

**Note.** This article applies to any company incorporated (1) for a work of internal improvement : Minn. ; Va. 1072 ; W.Va. 42,1 ; Tenn. 1549.

(2) So, "for public use : " Mo. 2734.

(3) To "railroads, plank-roads, tram-roads, turnpikes, and canal companies : " N.C. 1698 ; Tenn. ; Ore. 3239 ; S.C. 1550 ; La. D. 698.

To turnpikes : Ky. 18b,10. Roads : Col. 338 ; Ore. : Wy.

To bridge companies : N.C. 1885,168 ; Col. ; Ore.

Telegraph and telephone companies : Mo. ; Ark. 1885,107,13 ; Col. : Wy. ; La.

Ditch companies Col., Wy., La. Water-flume or aqueduct companies : Wash. 2472. Flaming : Wy.

Ferries : Col. Tunnels : Col. As well as railways.

§ 8740. **General Principles.** In case any such company is unable to agree for the purchase of any real estate required for the purposes of its incorporation, it shall have the right to acquire title to the same in the manner and by the special proceedings prescribed (1) in this chapter: N.J. R.Rs. 100; Pa. R.Rs. 48; Ind. 3906; Mich. 3331; Wis. 1828,1845; Io. 1244; Minn. 2467; Md. 23, 167; W.Va. 54,48; N.C. 1699,1943; Ky. 18b,1; Tenn. 1549; Mo. 2734; Ark. 5458; Tex. 4180; Ore. 3258; Col. 338; Mon. G. L. 685,2667; Wy. 548; Uta. 2335; S.C. 1885,96,4; Ga. 1689(k); Ala. 1580; Fla. 39,13; La. D. 698; N.M. 2665(7); Ariz. 313(7); Oka. 1053.

(2) By the general law of eminent domain: Ill. 114,18; Va.; W.Va.; S.D. 1891,94; Mon. C. C. P. 597; Ala. 3207; Ariz. 316. See Vol. I., Art. 114.

And by a late statute it appears that all condemnation proceedings of land by railway corporations must be conducted under the general law of eminent domain, and the earlier special provisions concerning railways contained in this article do not now apply: N.Y. 1890,565,7; Mon. 1891, p. 266. And every provision for that purpose heretofore made in any special law or act of incorporation, or amendment thereto, is repealed: Wis.

(3) In Georgia, provision for assessing damages by appraisers is usually made specially in each railroad charter: Ga. 3032.

The directors may always purchase any such lands, materials, right of way, or interest of any owner at a price agreed upon (with the approval of the court if the person be *non compos* or an infant, Ind.): N.H. 158,8; Ind. 3907; Neb. 1,16,95; Md. 23,167; N.C. 1698; Mon. And compare § 8702.

The funds for the construction of railroads being derived mainly from the proprietors, and the profits derived from the tolls and income thereof being payable to them, their routes shall be surveyed and the roads laid out in the first instance by their agents. They may locate and lay out the road at one time through its entire course, or in parts at different and successive times, as they shall deem conducive to the interests of all concerned: N.H. 158,5.

They may purchase or otherwise take lands or materials necessary for making or securing its railroad: Vt. 3356.

No railroad corporation shall locate or construct its road or a branch or extension thereof, or enter upon and use land or other property, except for making surveys, (1) until a sworn estimate of the total cost of constructing the same, prepared by its chief engineer, has been submitted to the board and approved by it; nor until it has been made to appear to the satisfaction of the board that an amount of the capital stock of the corporation equal to at least fifty per cent of such cost has been actually subscribed by responsible parties, without any condition which invalidates the subscription, and that twenty per cent of the par value of each share has been actually paid in: Mass. 112,85.

(2) Until the location has been filed (§ 8718) and the damages estimated (§ 8749) and secured: Me. 51,17.

The certificate of a master in chancery or commissioner of insolvency for the county in which a subscriber resides, that he is worth property in his own name over and above all encumbrances to an amount equal to his subscription, shall be conclusive evidence of his responsibility: Mass. 112,85.

If the board refuses its approval to an estimate or a subscription list so submitted, the reasons for such refusal shall be stated in writing at the time and in detail, and included in its next annual report: Mass. 112,85.

No corporation shall enter upon or use any land or other property, except for making surveys, (1) until it has duly filed such location with the commissioners of the county in which such land or other property is situated: Mass. 112,89.

And (2) until the county commissioners have determined all highway crossings (see § 8746) : Mass. 112,94.

When any railroad company shall take any property for the purpose of its railroad, the owner of such property may at any time within three years thereafter demand in writing of the treasurer of the company a written description of such property so taken, and said company shall within thirty days deliver to him such description ; and if it fail to do so, all its rights to enter upon or use said property, except for making surveys, shall be suspended until it shall have so delivered such description : Ct. 3467.

Before a company commences proceedings to condemn land it must file a copy of its articles and the affidavit endorsed thereon with the county clerk of the county where such land lies : Vt. 3317.

In all the proceedings in relation to the sale or appropriation of real estate, and ascertaining and receiving the compensation therefor, for railroad purposes, as prescribed in this act, the term "person" shall be deemed to include municipal or other incorporations : Nev. 872 ; Uta. 2348.

In all proceedings for the condemnation of land, timber, stone, gravel, water, or other materials for the uses and purposes of any railroad corporations, organized and existing under the laws of this territory, such railroad corporation shall be and hereby is required to elect under which of the several acts now in force it desires to effect such condemnation : N.M. 2729.

Where a railroad or branch railroad is intended to be built under this section, between two points where a railroad is now constructed, the general direction and location of such new railroad shall be at least ten miles from the railroad already constructed, but this section shall not be construed to refer to any point within ten miles of either terminus, or to prevent said roads from running as near to each other for said first ten miles from either terminus as the interest of such company building the new route may dictate : Ga. 1689(t).

§ 8741. **Preliminary Survey.** A railway has in all states generally power to cause an examination and survey of its proposed route to be made, and for that purpose to enter by its officers or agents on the land of any person : N.H. 158,2 ; Me. 51,17 ; Vt. 3354 ; Ct. 3438 ; N.Y. 1887,724 ; 1890,565,4 ; 1850,140,28 ; N.J. R.Rs. 89,99 ; O. 3281 ; Ind. 3903,3907 ; Ill. 114,20 ; Mich. 3323 amt. ; 1891,90 ; Wis. 1828 ; Minn. 2471 ; Kan. 23,47 ; Neb. 1,6,81 ; Va. 1072 ; W.Va. 54,50 ; N.C. 1957 ; Mo. 2543 ; Ark. 5445 ; Tex. 4168 ; Nev. 851 ; Col. 339 ; Tenn. 1569, 1902 ; Ore. 3239 ; S.C. 1558 ; Cal. 5465 ; Wash. (Hill) 1569 ; Dak. 1879,46,9 ; Ida. 2666 ; Uta. 2333 ; Oka. 1035,1051 ; Ala. 1580 ; Ga. 1689(i) ; Fla. 39,10 ; N.M. 2665 ; Ariz. 313(1). Subject to liability for actual damages : Vt., N.Y., N.J., Ind., Ill., Mich., Kan., Wis., Va., W.Va., N.C., Mo., Ark. 5447, Cal., Tex., Nev., Col., Dak., Tenn., Ida., Uta., Ala., N.M., Ariz., Oka.

"Doing no unnecessary damage : " Minn., Wash., Ore.

But not until a \$5,000 bond for damages is filed : Mich. 1891,90.

But they shall make no entry for other purposes without the consent of the owner, until the damages are agreed upon by the parties, or ascertained and paid to the owner, or deposited as hereinafter directed : Vt. 3354 ; Tex. 4181. And see § 8740.

But no company shall, under the authority of this section, throw open any fences or enclosures on any land, or construct its work through the same, or in any way injure the property of the owner or possessor, without his consent. Nor shall a company under any provision of this chapter invade the dwelling-house of any person, or any space within sixty feet thereof, without the consent of the owner : Va. 1072.

Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall des-

ignite the depot grounds along said first twenty-five miles before the road-bed is begun, and no railway company shall change its route or depot grounds after the same have been so designated: Tex. 4224.

Every railroad company organized under this title shall, on the completion of the first twenty-five miles of its road-bed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road: Tex. 4225.

§ 8742. **Extent of Location.** (A) Railways may lay out the road not exceeding (1) one hundred feet in width: N.J. R.Rs. 89 & 99; Ill. 114,20; Mich. 3323; Wis. 1828; Io. 1241; N.C. 1707,1957; Dak. 1879,46,9; Kan. 23,47; Va. 1073; Mo. 2543; W.Va. 54,50; Ala. 1580; Oka. 1035.

(2) Five rods: Mass. 112,88; Vt. 3356.

(3) Four rods: Me. 51,14.

(4) Six rods: N.H. 158,4; Ct. 3460; N.Y. 1887,724; 1890,565,4; Ind. 3903; Ark. 5447(4).

(5) Sixty feet: Pa. R.Rs. 47; Ore. 3240.

(6) Two hundred feet: Neb. 1,16,81; Tex. 4169; Col. 336; Wash. (Hill), 1570; Mon. G. L. 685; Ga. 1689(i); Ariz. 313(4); Fla. 39,10; N.M. 2665.

(7) Nine rods: Ida. 2666; Uta. 2333; Cal. 5464.

(8) Ten rods: Nev. 851.

(9) No width is specified: O. 3281; Minn.; Md. 23,167; Neb. 16,81; Ind. 3907; Oka. 1051.

(B) And may take as much more land as may be necessary (1) for cuttings or embankments: N.H., Mass., Me., Ct., N.Y., N.J., Pa., Ind., Ill., Mich., Wis., Io., Kan., Neb., Va., W.Va., N.C., Mo., Ark., Tex., Ore., Nev., Col., Uta., Dak., Mon., Ga., Ala., Fla., N.M., Ariz., Oka.

Or "making or securing its road:" Mass. 112,91; 1884,134; N.Y.; Md.; O.; Nev.; Ore.

(2) Depots and stations: Mass.; Me. 51,16; Vt. 3357; Ct.; Pa.; O.; Ind.; Wis.; Mich. 3356; Neb.; Minn. 2467; Ark.; Mo. 2563; Tex. 4180; N.C. 1698; Dak.; Uta.; Nev. 856; S.C. 1554; Ala.; Wash.; Ida.; Ore.; Mon.; Oka. 1051; Ariz. 313(9).

Wood and water stations: Io., O., Neb.

(3) Side tracks: Mass., Me., Ct., N.Y. ib. 7, Pa., Minn., O., Ind., Neb., Mo., Ark., Ore., Mon., Wash., Ala., Oka. Compare § 8701,A.

(4) For procuring stone and gravel: Mass.; Ct.; N.Y.; Ind.; Ill. 114,19; Mich.; Wis.; Io.; Ark.; Nev.; Mo. 2566; Va. 1099; W.Va. 52,14; Uta.; Dak.; Ga.; Ala.; Fla.; N.M.; Ariz.; Oka.

(5) Water stations: Ind. 3907; Io. 1242; Neb., Nev., Ark., Ind., Oka.

(6) Other materials for constructing except timber: O., Ill., Ore., N.M.

Including timber: Me., Vt., Ind., Io., Mo., Nev., Uta., N.M., Ariz., Neb., W.Va., Dak., Wash., Oka., Ga., Fla.

(7) For draining the road-bed: N.Y., Mich., Nev., Uta., N.M., Ariz., Wash.

(8) It has power to cut down standing trees that are in danger of falling on the railway: Ill., N.Y., Mich. 3442; Wis., Kan., N.C., Mo., W.Va., Tex., Col., Ore., Dak., Mon., Ga., Ala., Fla., Oka.

Whenever it is necessary for the public safety, the proprietors of a railroad may take the right to remove trees, bushes, and other obstructions located so near to a crossing of their railroad by a highway or private way, situated outside the thickly-settled portions of a town or city, as to obstruct the view of the crossing, or so near to a curve in



their road so situated as to obstruct the view of the road, and the right to keep the land free from such obstructions, by filing a location of the land in which the right is taken, including a particular description of the right taken, and by giving notice thereof to the landowner, as provided : N.H. 157,28.

The taking of gravel, etc., and damage occasioned to real estate thereby, may be determined under the general law of eminent domain (§§ 1142, 1145) : Ill.

(9) A right of way over adjacent lands sufficient to enable it to construct and repair its road, and the right to conduct water by aqueducts, and to make proper drains : O. ; Neb. ; Ind. ; Oka. ; Ore. 3240. But no appropriation of private property to the use of a company shall be made until full compensation therefor is made in money, or secured by deposit of money to the owner, irrespective of any benefit from any improvement proposed by the company, as prescribed by law : O. See § 8752.

(10) It may take land for supplying water : Ct. 3461 ; Vt. ; Io. 1242 ; Mo.

And maintain dams or reservoirs upon payment of damages : Io. 1250 ; Mo.

Whenever the railroad commissioners recommend any alteration, the railroad may condemn land necessary therefor : Ct. 3512.

Such water and in such quantity as is required for the uses of the road, with the right of entering upon the land, and constructing and keeping in repair necessary aqueducts : Vt. 3356 ; N.Y. 1890,565,7 ; Io. 1243 ; Va. 1888,455 ; Mo. ; Ore. ; Wash. ; N.M. 2665(10) ; Ariz. 313(10).

But it shall not take otherwise than by purchase water or a spring of water which the owner requires for the reasonable and convenient use of his premises ; and if the owner and the corporation cannot agree as to what water is necessary for such use, the corporation shall apply to commissioners : Vt., Va.

Nothing in this act contained shall authorize the taking of any waters that shall at the time of such taking be commonly used for domestic, agricultural, or manufacturing purposes to such an extent as to injuriously interfere with such use in the future : N.Y. 1890,565,7.

Such company may acquire, by purchase or gift, any lands in the vicinity of the line of its road, or through which the same passes, so far as may be deemed convenient or necessary by the company to secure the right of way, or such as may be granted to aid in the construction of the road, and hold or convey the same in such manner as the directors prescribe : O. 3282 ; Ct. 3462 ; Md. 23,172. Compare § 8702.

It shall be lawful for any railroad corporation, owning or operating a railroad within this state, to take and acquire title, in the manner prescribed by the act under which such railroad may have been originally constructed, or by any supplement to said act, to all such lands adjoining their road as constructed, or their right of way as located, as in the judgment of the directors of such company the exigencies of business may demand, for the erection of freight and passenger depots, and all other legitimate purposes of said company ; and said corporations are hereby for this purpose again invested with all the powers, privileges, and franchises given in their acts of incorporation, and in the various supplements thereto : N.J. R.Rs. 172.

The land which it may acquire for buildings, or for an abutment along its line generally, shall not exceed three acres in any one parcel : Va. 1073. So, two acres : N.C. 1709. The land which it may acquire for buildings or other purposes of the company at the principal termini of its work, or any place or places within five miles of such termini, shall not exceed fifteen acres in any one parcel ; but in the case of a railroad company, land not exceeding forty acres in any one parcel may be acquired for its main depots, machine shops, and other necessary purposes connected with the business of said company : Va.

§ 8743. **Powers of Location.** (A) Any railway corporation organized in this state (or chartered by or organized under the laws of the United States or any state or

territory) may take and hold, under the provisions of this chapter, so much real estate as may be necessary for the location, construction, and convenient use of its railway : Io. 1241 ; Oka. Compare §§ 8702,8742.

Every charter shall confine the road within the limits indicated by the notice required in (§ 8513), shall specify the several cities and towns through which the same may pass, and shall otherwise designate the route on which the road is authorized to be made, with as much certainty as the nature of the case will admit : Mass. 112,32. Compare § 8747.

Any railroad corporation may take and hold such land as may be necessary for side tracks, wood-sheds, repair shops, engine, car, and freight houses : N.H., Me.

For turn-tables and depot purposes, and shall file a location of the same as now provided by law for the location of railroads ; and the damages for the same, in case the parties do not agree, may be assessed in the same manner as now provided by law for land taken for such railroads : N.H. 158,26.

Land may be taken for necessary additional depot grounds, with the approval of the railway commissioners, who shall examine into the matter after notice to the land owner : Io. 1884,190.

**B)** Any railroad corporation may in like manner take and hold earth, stone, and gravel, contiguous to the line of said railroad, necessary for repairing, securing, or ballasting its road : Mass. 112,88 ; Me. 51,16 ; Neb. 1,16,81 ; Md. 23,167 ; W.Va. 54,49 ; N.C. 1702 ; Cal. 5465 ; Nev. 851 ; Ida. 2666 ; N.M. 2665(7) ; Ariz. 313(7) ; Oka. Compare § 8742(4).

Such taking is valued by a jury of three freeholders of the county [special provision, compare § 8749] : N.C. 1703.

It may enter upon any lands adjoining or in the neighborhood of their railroad so to be constructed, and quarry, dig, cut, take, and carry away therefrom any stone, gravel, clay, sand, earth, wood, or other suitable material, necessary or proper for the construction of any bridges, viaducts, or other buildings which may be required for the use, maintenance, or repairs of said railroad : Pa. R.Rs. 47 ; Ill. 114,19 ; Va. 1888,455 ; Tex. 4178.

*Except* fuel and wood : Ill., Tex.

So, the timber used in the construction or repair of said railroad shall be obtained from the owner thereof only by agreement or purchase : Pa. R.Rs. 47.

Railroads are given authority to locate their lines in tunnels, or wholly or partly beneath the surface of the ground, appropriating and paying for rights and easements necessary thereto, as in other cases : Wis. 1891,282.

Any railroad company of this state, or which may hereafter be created or formed under the laws of this state, shall have the power and right, in addition to its other powers and rights, to acquire, by condemnation or otherwise, the necessary lands within two hundred feet on each side of the central line of the main track of its road for the purpose of planting trees or erecting screens thereon for the protection of its road against snow : Minn. 2469.

**(C)** No railroad corporation shall take without consent of the owners (1) dwelling-houses. Me. 51,17 ; N.C. 1701 ; Fla. 68,32 ; La. D. 705 ; (2) or public or private burying-grounds : Me. ; Vt. 3211 ; N.C. ; Fla. ; La.

(3) Or churches : Me.

(4) His yard, kitchen, or garden : N.C., La.

Unless the jury find that the line cannot be diverted without great public loss or inconvenience : La.

Railroads are forbidden to locate their lines through cemeteries or within a quarter of a mile thereof, except by unanimous approval by the railroad commissioners : Ct. 3463.

When land is taken other than for permanent way, if the parties do not agree as to the necessity therefor, or for any reason the land owner does not consent, the railroad applies to the railroad commissioners, who, after hearing, determine how much of such real estate is reasonably necessary for the business of the corporation : Me. 51,16.

No land without the limits of its road shall be taken by a railroad corporation for the requisite and convenient accommodation of its road without the permission of the owner thereof, unless the commissioners, on the application of the corporation, and after twelve days' notice to the owner, first prescribe the limits within which such land shall be taken : Vt. 3358 ; Ct. 3460.

The president and directors of such company shall have power and authority, by themselves, their engineers, superintendents, agents, artisans, and workmen, to survey, ascertain, locate, fix, mark, and determine such route for a railroad as they may deem expedient ; not, however, passing through any burying-ground or place of public worship, or any dwelling-house in the occupancy of the owner or owners thereof, without his, her, or their consent ; with such branches or lateral roads as may be specifically authorized ; with such bridges, viaducts, turn-outs, sidings, or other devices as they may deem necessary or useful : Pa. R.Rs. 47.

And may take all land in which depots, warehouses, offices, toll-houses, engines, and water stations, other buildings, or appurtenances hereinbefore mentioned, may be located, or which may be necessary or convenient for the erection of the same, or for any purpose necessary or useful in the construction, maintenance, or repairs of said railroad, and therein and thereon to dig, excavate, and embank, make, grade, and lay down, and construct the same : Pa. R.Rs. 47.

Any corporation may obtain the right of way over, through, under, and across any lands needed for the construction of any railroad or telegraph, pneumatic tube lines, subway conduits for the passage, operation, and repair of electric and other lines and pipes, and all necessary sites and grounds for depots, shops, and other buildings requisite for the proper carrying on of the business to be transacted, or may obtain the right to overflow, by reason of any dam or other erection necessary, all and any lands damaged thereby, and the right of way in and over the bed of any river, bay, lake, or water-course, and the banks thereof, together with the right to overflow, injure, or destroy any existing dams, mills, or other property, and to canal in and along the valley of any such river, bay, stream, lake, or water-course, and to purchase and erect all necessary buildings for the operation and prosecution of any manufacturing business upon the water-power incidentally created by such improvement, by proceedings as in this title provided : Minn. 2467.

The power to condemn hereby granted shall embrace all roadways, spur and side tracks, rights of way, railroad crossings, depot grounds, yards, grounds for machine-shops, warehouses, elevators, station-houses, water-tanks, and all other buildings and structures, rights, privileges, and easements necessary to the construction, or necessary or convenient to the operation, of any of said railroads ; also all lands, rights, privileges, and easements that are or may become necessary or convenient to the full enjoyment, use, maintenance, and operation of any of said railroads : Minn. 2506.

**§ 8744. Other Railroads.** (See also § 8726.) Any railroad company may in the construction of its railroad cross the railroad of any other company, or connect with the same : Ct. 3471 ; N.Y. 1890,565,12 ; N.J. Suppl. R.Rs. 18 ; Pa. R.Rs. 10,11 ; Ill. 114,20 ; Md. 23,197 ; Ore. 3240 ; Ga. 1689(1) ; Col. 2794 ; Ala. 1582 ; Miss. 1884,26,2 ; Kan. 23,203 ; Dak. 1879,46,9.

And if it cannot agree with such other railroad company, or the managers thereof, as to such crossing or connection (1) the railroad commissioners may determine the place and manner of such crossing or connection, after reasonable notice to the several com-

panies in interest to appear and be heard in relation to the matters contained in such notices, and may make such orders as to bridges, abutments, piers, tunnels, arches, excavations, retaining walls, embankments, and approaches as they shall judge necessary : Ct. ; Ill. 1889, p. 224 ; Kan. But no railroad shall cross any other railroad at grade, except for the purpose of connecting therewith, when the avoidance of a grade crossing is practicable, and the railroad commissioners shall be judges of the question of practicability ; and this section shall not affect any existing grade crossing, or any grade crossing which has been authorized or approved by the railroad commissioners, or the crossing of the New York and New England Railroad by the Hartford and Connecticut Valley Railroad authorized by the General Assembly at its January, 1882, session, nor shall it apply to the New Canaan Railroad, nor the Meriden and Cromwell Railroad : Ct.

(2) The court appoints three commissioners : N.Y., Pa. R.Rs. 11 ; Ala., Miss.

(3) Condemnation as in ordinary cases : N.J., Md., Ill., Col., Ore., Dak., Ga.

No railroad shall be constructed across another railroad at the same level therewith without the consent in writing (1) of the board of railroad commissioners : Mass. 112,118 ; S.C. 1530. (2) Of such railroad : Ga. 1689(i).

The cost of making the crossing (and, in Pennsylvania, the keeping such persons as may be necessary to give signals or prevent accidents) is to be borne by the newer road : Pa. R.Rs. 10 ; Ind. 3904 ; Ill. 1889, p. 224,2 ; Dak. ; Oka. See § 8726.

When practicable, the newer road must go under or over the other : Ala.

Each road is to maintain its own track : Ind. 3905.

A railroad may cross another railroad at grade points or where it will not obstruct such other road, or by bridge or tunnel : Ga. 705.

A railroad may be carried over or under a canal or railroad in such manner as not necessarily to impede the travel or transportation on them. The corporation making such crossing is liable for damages occasioned thereby in an action on the case : Me. 51,31.

No way shall be laid out through any land or right of way of a railroad used for station purposes, unless the commissioners after notice and hearing adjudge that public convenience and necessity require it : Me. 18,29.

No railroad corporation shall take the grounds occupied by any other railroad company, and necessary for its use for station purposes, without its consent. When application is made to take such grounds, the railroad commissioners, upon notice and hearing thereon, shall determine whether the land proposed to be taken is necessary as aforesaid or not, and whether any public necessity requires it to be taken : Me. 51,121.

When a grant to any railroad reserves any right in land or covenant which may interfere with the public accommodation and the company, and the other party in interest cannot agree upon the compensation to be paid for the release of such interest or condition, it may be condemned and appraised like other real estate taken in the first instance : Ct. 3466.

Nothing contained in this chapter shall be construed to authorize the taking or using the track, wharves, depot, or depot grounds of any other company without its consent, except for the purpose of crossing or connection : Ct. 3453.

Nor to take or acquire, other than by mutual agreement, any right or easement in or to any lands or real estate owned or occupied by any other railroad corporation, excepting the right to intersect or cross the tracks and lands owned or held for right of way by such other company, such intersection and crossing to be limited to points where the same can be made without appropriating or affecting any lands owned or held for depots or gravel beds : N.Y. 1890,565,7.

It shall be lawful for any railroad to cross with their road any other railroad, at any point not more than two miles from the terminus of either road at any angle not less than fifteen degrees : N.J. Suppl. R.Rs. 29. Elsewhere, not less than forty-five degrees : N.J. ib. 18.

In cases where any railroad company has failed to construct its railroad upon any part of the location filed by it within the time allowed by law, and since the expiration of said time any other railroad company has filed a location crossing the same, said company last filing its location shall have priority of right over said location at said crossing : N.J. Suppl. R.Rs. 30.

Courts of equity may determine the mode of crossing railroads, which will inflict the least injury upon the rights of the company owning the road first constructed, and if possible avoid a grade crossing : Pa. Corps. 109.

The railroad company seeking the crossing shall in all cases bear the entire expense of the construction thereof, including all costs and incidental expenses incurred in the investigation by the board of railroad and warehouse commissioners : Ill. 114,199.

Any railroad company desiring to cross with its tracks the main line of another railroad company shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed : Ill. 114,198 ; W.Va. 52,11 ; Cal. 5469. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners : Ill.

A railroad may condemn land owned by another railroad in or adjacent to the depot of such railroad, but not in actual use for depot or other purposes pertaining to operation, and not needed by such railroad for a depot or other terminal facilities, as in case of land held by individuals. The question of actual use and necessity to be determined in addition to the other questions : N.J. Suppl. R.Rs. 18 ; Mich. 3357.

There shall be no power, except for crossing, to take the track or right of way of any other railroad company, except when any road-bed or part thereof has for five years remained, or shall hereafter for five years remain, in an unfinished condition, and without having the ties and iron placed and continued thereon : Mich. 3331 ant.

If after the determination, as provided for in section seven of this act, the companies cannot agree upon the terms upon which the said crossing shall be made, the company so desiring may acquire the right to make the same by condemnation, in the same manner as prescribed by the act for obtaining title to real estate or other property, and as provided in this act therefor : Mich. 3350 ant.

If such route cross the road of any other railroad company, said board shall give at least ten days' notice to the general manager or general superintendent of such other company when and where said board will consider the question of approving such map, and shall permit such other company, if it so desire, to be heard in opposition to such approval ; and at the time of approving said map said board may determine the place where and the manner in which said crossing shall be made, whether at grade or otherwise, and, if at grade, what safeguards shall be provided by the company desiring to make such crossing to protect against accidents thereat : Mich. 3321.

But no corporation which shall have obtained the right of way and constructed its road at the point of intersection before the application for the appointment of commissioners may be made, shall be required to alter the grade or change the location of its road, or be required to bear any part of the expense of making and maintaining such crossing or of such proceeding : Wis. 1828(6) ; Oka. 1035.

A railroad may acquire lands previously acquired by any other railroad, in the same manner as other lands ; but the commissioners and not the court shall primarily determine the necessity of such taking, as well as the compensation therefor ; and all such questions may also be tried ; and in no case shall any such land be taken so as to interfere with the main track of the railroad first established, except for crossings, as hereinbefore : Wis. 1854 ; Fla. 39,43.

A railroad may make with any railroad company such arrangements for the use of any portion of its tracks and road-beds as it may deem necessary : Minn. 2505 ; Dak. See § 8725.

May, wherever necessary, enter upon and cross over or under the tracks and road-beds of any other railroad corporation or company for the purpose of effecting a crossing upon, over, or under the same, or a connection with the same : Minn. 2505.

May enter upon, across, over, under, or along any other lands or tracks of all other railroad corporations, streets, and highways, with its own tracks, upon paying just compensation to the person or corporation injured thereby : Minn.; Ida. 2670.

"Nothing in this act contained shall be construed as authorizing or empowering said railroad company, or any of them, to condemn, appropriate, or use any lands, property, or rights, or franchises of any other railroad corporation, occupied or in use or necessary for the operation of its railroad or the transaction of its business by such other corporation, except when the petitioning corporation shall elect to cross any such property and tracks, or either, by its tracks, and in such case the corporation electing to cross any such property and tracks, or either, may cross the same either over, under, or at grade, and then only by the construction of its tracks across the same. And in case where such election shall be made, the district court to which the petition shall be presented shall at the time of the appointment of the commissioners, upon the request of either party and upon such showing as the court may deem necessary and proper, prescribe the location and the manner in which such crossing or connection shall be made, so as to effect the purpose of the petitioning corporation, and at the same time do the least injury to the corporation whose property is taken : " Minn. 2507.

The legislature reserves the right to provide for connecting with any work of internal improvement and other works at such point as may seem to it proper : Va. 1097 ; W.Va. 52,12.

The operation of the Code be and the same are hereby extended so that the same shall apply to and include the condemnation and taking of the property, privileges, rights, or easements of private corporations for public purposes or internal improvements : Tenn. 1885,135,1.

In case the lands sought to be appropriated are held by any corporation, the right to appropriate the same by a railroad, telephone, or telegraph company shall be limited to such use as shall not materially interfere with the uses to which, by law, the corporation holding the same is authorized to put said lines : Mo. 2741.

In case lands sought to be appropriated by any railroad company in this state for depot purposes belong to private persons, such company may have such lands condemned. Provided, that in no case shall more than ten acres of land in the country or more than six blocks in a town, village, or city be condemned under this article at any one place or for any one depot : provided, further, that any other railroad company shall have the right to use said depot grounds for depot purposes, with the necessary buildings, turn-outs, sidings, switches, and other conveniences in furtherance of said purpose ; and if the said two companies cannot agree upon the amount of compensation to be made therefor, or the points or manner of such use, the same shall be ascertained and determined by commissioners, as provided by law for the condemnation of land for railroad purposes : Mo. 2742.

Any railroad company whose right of way passes through any cañon, pass, or defile shall not prevent any other railroad company from the use and occupancy of said cañon, pass, or defile for the purpose of its road in common with the road first located, or the crossing of other railroads at grade ; and any railroad company authorized by law to appropriate land, real estate, premises, or other property for right of way or any other corporate purpose may present a petition, in the manner and form hereinbefore provided, for the appropriation of a right of way through any cañon, pass, or defile for the purpose of its road where right of way has already been located, condemned, or occupied by some other railroad company : Va. 1888,192 ; Wash. 1889-90, p. 301 ; Mon. G. L. 687.

Whenever any railroad company shall have constructed its roadway and track or tracks, and it shall be necessary for any other railroad company to cross the same with its track, it shall be lawful for such company to do so at any place so as not to obstruct such track already constructed : Miss. 1884,26.

"To have and use equal room, ground, rights, privileges, and conveniences for tracks, switches, sidings, and turn-outs upon any levee, river bank, or front, steamboat or other public landing, and upon any street, block, alley, square, or public ground within any incorporated town or city, any charter or ordinance of any such city or town to the contrary notwithstanding ; and to accomplish this, may adjust, with other corporations, the ground to be occupied by each, with such tracks, switches, sidings, and turn-outs ; and if such corporations cannot agree upon such adjustment, and the amount of compensation to be paid for the purchase or necessary change of location and removal of any track previously laid, the same shall be ascertained and determined, and the common, mutual, and separate rights adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property : " Oka. 1035.

No corporation shall locate a railroad upon or over any portion of a route for which a charter of any other corporation was upon the fourteenth day of September, 1883, and still is, existing, and under which a location has not been made, until it has been made, or until the time limited in the charter for the location has expired ; and no corporation shall locate a railroad upon or over any portion of a location made by any other corporation, except so far as may be necessary for connections and crossings : N.H. 156,38.

§ 8745. **State or Public Lands** may be condemned ; but for the actual right of way only : N.J. Suppl. R.Rs. 18.

Land belonging to the state or any county or town (see § 8746 for roads) may be granted to a railroad by the legislature (the commissioners of land, N.Y., Mich. ; the secretary of state, N.C., Mo.) or the county and town officers respectively ; and if they do not agree, it may be condemned : Ind. 3916 ; Mich. 3341 ; N.C. 1905 ; Mo. 2560 ; N.Y. 1890,565,8.

So, the trustees may sell school lands for railroad purposes : Ill. 114,47.

Every railroad is given a right to take a right of way through any tract of public land upon filing a location with the commissioners (secretary of state, Mo.) of public lands, and said commissioners may also grant to any such corporation any public land of the state which may be required for the purpose of their road in excess of the mere right of way upon such terms and compensation as they may fix : Wis. 1857 ; Mo.

A right of way for depots, grounds, etc. over state lands may be obtained upon payment of the appraised value of the land taken, or at such rate as the governor and land commissioner estimate, not less than that fixed by the state constitution : Minn. 2515.

State land under water may be taken at a price fixed by the Riparian Commissioners : N.J. Suppl. R.Rs. 18.

Corporate authorities of any city, town, village, or other municipal corporation, are hereby authorized and empowered to grant, sell, convey, or lease any public grounds or place within their respective corporate limits to any railroad corporation : subject, nevertheless, to all the rights of the original proprietors of such public grounds : Minn. 2510.

The right of way over any swamp lands which belong or which may hereafter belong to this state is hereby granted to any railroad company which has heretofore located and constructed, or which may hereafter locate and construct, its line of railroad over any such swamp lands, to the extent of a strip of ground one hundred and fifty feet in width : Minn. 2511.

A right of way is hereby granted over any swamp, school, internal improvement,

agricultural college, or university lands held by the state, to any railroad company proposing to construct, or that has constructed, a railroad over or upon the same, on the conditions and terms herein provided : Minn. 2513.

A railroad may occupy state or public lands upon filing a certificate with the secretary of state, and paying full value for the same except one hundred feet of track way : Neb. 1,16,105 ; 1887,55.

And not more than twenty acres out of any six hundred and forty for other purposes : Neb.

The land is appraised by the county commissioners, not less than seven dollars per acre : Neb.

Railroads are given right of way through any swamp (school, S.D.) or public lands belonging to the state, one hundred feet wide (fifty feet, S.D.) with additional width (except in Mon.) to two hundred feet (five hundred feet, N.M., Ariz.) where necessary ; and further right to occupy sites for depots or other buildings (not within the limits of any incorporated city or town, Nev.), paying to the state the value of the same (except in Montana and New Mexico and in Wyoming, where however, ten dollars per acre is paid for depot land), no one such depot, etc., to cover over two acres (not over forty acres to each ten miles, Mon. ; so, twenty acres, S.D. : twenty acres each twelve miles, Wy. ; there is no limit, N.M.), (and such sites not to be nearer than five miles apart, Nev.) ; and further right is given to take materials of earth, wood, stone, or other kinds from any such lands : Nev. 854 ; N.M. 2689 ; Ariz. 314 ; Mon. G. L. 684 ; Wy. 1891,39 ; S.D. 1890,61.

There is granted to every railroad corporation the right of way for the location, construction, and maintenance of their necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands, of the state, not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts, or for the protection thereof, not in any case to exceed two hundred feet in width : Cal. 5474. So, one hundred feet : Ore. 4057 ; two hundred feet : Fla. 39,24.

The grants mentioned in the preceding section do not apply to public lands of the state within the corporate limits of towns and cities, or within three miles thereof.

The right to take from any of the lands belonging to the state, adjacent to the works of the corporation, all materials, such as wood, stone, and earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of its works and adjuncts, is granted to such corporations.

If any corporation receiving state lands or appurtenances thereunder is dissolved, ceases to exist, is discontinued, or the route or line of its works is so changed as not to cover or cross the lands selected, or the use of the lands selected is abandoned, such selected lands revert, and the title thereto is reinvested in the state or its grantees, free from all such uses : Cal. 5475-5477.

There is a state land grant of alternate sections of swamp and overflowed lands to all railroads : Fla. 39,26.

Every such corporation shall have the right of way for its line of road through and over any lands belonging to this state, and to use any earth, timber, stone, or other material upon any such land necessary to the construction and operation of its road through or over said land : Tex. 4167 ; Ore. 1891,180.

Any railroad corporation is authorized to pass over, occupy, and enjoy all the public lands, to the extent and in the manner prescribed by the act of congress approved March 3, 1875 : provided, that the damages accruing to any occupant or possessory claimant or other person who may reside on or have improvements upon said public land, shall be determined and paid by said railroad corporation as provided in this chapter for owners of private lands : Oka. 1058.



§ 8746. **Roads and Highways. (A) In the Future.** No railroad can hereafter be built across a railroad or highway at grade without the consent of the railroad commissioners : N.H. 159,2 ; Mass. 112,119 ; Me. 18,27 & 28 ; 1889,282 ; Vt. 1888,21 ; R.I. 158,35,38 ; 1890,834 ; Ct. 3476,3480.

And county commissioners : Mass.

With appeal to the supreme court : R.I.

But by a new statute the matter is determined by special commission appointed by the superior court : Mass. 1890,428.

In several states a statute has been enacted about providing for the gradual abolition of grade crossings ; thus, in Connecticut, upon petition of the selectmen of any town, or the municipal authorities of any city, etc., and a hearing before the railroad commissioners, the commissioners may proceed of their own motion, damages to be assessed as in ordinary cases, and the expenses to be paid by the railroad ; or one fourth of the whole expenses may be assigned to the town if the highway was in existence when the railroad was constructed over it at grade, or if constructed since the railroad, one half. At least one grade crossing per year must be removed for each sixty miles of railroad : Ct. 1889,220.

The railroad commissioners may order such crossing changed upon any highway, and direct at whose expense and in what time it shall be made ; not more than one a year in any one county or any one railroad to be so ordered : Vt. 1888,21.

A town government may require the railroad to bear the expense of raising or lowering a highway so as to abolish a grade crossing, when necessary, with appeal to the railroad commissioner and supreme court : R.I. 158,33-4 ; 1889,758.

(B) **Roads crossing Railways.** After a railroad is built, a new road made across it must pass under or over the railroad, so as not to obstruct or injure it : Vt. 3381 ; Ct. 3481.

A highway may be laid out across a railroad previously constructed when the county commissioners adjudge that the public convenience and necessity so require : Mass. 112,125 ; Me. 18,27 ; 1889,282 ; S.C. 1535.

If, after the laying out and making of a railroad, the county commissioners have authorized a turnpike, highway, or other way, to be laid out across the railroad, all expenses of and incident to constructing and maintaining the turnpike or way at such crossing shall be borne by the turnpike corporation or the county, city, or town : S.C. 1498.

The expense of all crossings, above, below, or grade, in a new road, are to be apportioned as the commissioners decide upon ; report confirmed by the supreme court : Me. 51,27 ; 1889,282.

The cost is borne in halves : Ct.

(C) **Railways crossing Roads.** Whenever the track of a railroad shall cross a highway, turnpike, or plank-road, such highway, turnpike, or plank-road may be carried under or over the track, as may be found expedient : N.H.<sup>a</sup> 159,13 ; Me. 18,27 ; 1889,282 ; N.Y. ; N.J. R.Rs. 109 ; Ind. 3915 ; Wis. 1828 ; Md. ; N.C. 1954 ; Nev. 853 ; Cal. 5472 ; Dak. 1879,46,9 ; Ida. 2672 ; Ga. 1689(n) ; Fla. 39,10 ; Oka. 1035.

So of crossings of other railways : N.Y. ; N.J. ; Cal. ; Nev. ; Ida. ; Ga. 1689(n) ; Fla. 39,22.

Whenever, in the construction of such road or roads, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the president and directors of the said company so to construct the said road across such established road or way as not to impede the passage or transportation of persons or property along the same : N.J. 1887,167 ; Pa. R.Rs. 51 ; N.C. 1710 ; Tenn. 1894 ; S.C. 1531,1552 ; La. D. 691.

So, the railroad must maintain good and sufficient highway crossings: Mass. 112,124; Vt. 3383; N.J. Suppl. R.Rs. 19. See § 8814.

A railroad may (except in Massachusetts) be laid out so as to cross a turnpike or other road, and the corporation may (*must*, unless the commissioners otherwise order, Ct.) raise or lower the road so as to have the railroad pass over or under it: N.H.<sup>a</sup>; Mass. 112,121; Me. 1889,282,3; Vt. 3382; Ct. 3476,3481; N.Y. 1890,565,11; Io. 1262; Neb. 1,16,101; Md. 23,173; Nev. 853; Dak. Civ. C. 478; S.C. 1532; Miss. 1053; Oka. 1065.

A town may by vote require a railroad to raise or lower a highway for such purpose, or to maintain gates or a flagman (see § 8814): N.H. 159,15. With appeal to the commissioners: N.H. 159,17.

The approaches of the highroad must not exceed a grade of one in five: Ark. 1887,72.

So, "an easy and proper grade:" Miss.

In such case the railroad must maintain the bridge: Mass. 112,120; Me. 51,31; Vt. 3383; Ct.; N.J. Suppl. R.Rs. 19; Neb. 1,16,103; Dak. Civ. C. 480; S.C. 1498; Miss.; Oka.

It must put the road in good repair again: Neb., Md.

It may change the course and direction of any highway, street, turnpike, or plank-road when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad, and take land necessary therefor: N.H.<sup>a</sup> 159,14; Ct. 3480; Wis. 1828(5); Fla.; Oka. 1035; provided, such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods: Wis., Oka.

If a railroad find it necessary to change the site of any part of any public road, they must cause it to be reconstructed on the most favorable location in as perfect a manner as the original road, at their own expense. The damages incurred by such change to be ascertained and paid as in the location of the railroad: Mass. 112,122; Vt. 1888,21; N.Y.; Pa. R.Rs. 52; N.C. 1711-3; Oka. 1035; S.C. 1533; Ga.

But the road may not be changed for more than six rods, nor lengthened more than five: Oka.

When any lands shall be required in order to change any highway, street, turnpike, or plank-road, the same may be condemned, taken, and compensation made in the manner provided in this chapter; and when so taken (1) shall become a part of such highway: N.H. 159,18; Me. 1889,282,3; Vt. 3380; N.Y.; N.J. R.Rs. 109; Ind. 3915; Wis. 1836; N.C. 1954; Dak. 1879,46,15; Nev. 353; Oka. 1043; Fla. 3922.

(2) Shall belong to the railway: Md. 23,173; Cal. 5474; Ida. 2672; Ga.

The commissioners have jurisdiction in all such cases: Ct. 3488-3498.

**(D) Traversing Roads.** Municipal corporations through their proper authorities may make agreements with railroads for occupation of public grounds; and, if unable to agree, the land may be condemned in the ordinary way: Ill. 114,20; Neb. 1,16,83; Md. 23,169; W.Va. 54,50; Mon. G. L. 686. Compare § 8745.

If it becomes necessary, in the location of any part of a railroad, to occupy any road, street, alley, or public way, or any part thereof, it shall be competent for the municipal or other corporation, or public officer or public authorities, owning or having charge thereof, and the railroad company, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; or such company may appropriate so much of the same as may be necessary for

the purposes of said road, in the same manner and upon the same terms as are herein provided for the appropriation of the property of individuals : Ct. 3479 ; Minn. 2509 ; Md. 23,169 ; Va. 1093 ; W.Va. 54,50 ; Tex. 4174 ; O. 3283 ; Ore. 3242 ; Wash. 2458 ; Oka. 1060. And see also Wash. Hill's Codes, 1370.

If the road is without the town limits, the county court may make such agreement : Ore.

Rights of way through the streets or upon roads may be granted by the city or town councils : Ark. 5468-9 ; Minn. 2510 ; W.Va. 54,50 ; Wash. 2459 ; N.M. 2690. Or selectmen : Vt. 3377.

If they cannot agree, the damage commissioners order the corporation to build a new road : Vt. 3377.

Alterations in the road may be agreed upon, or determined by the commissioners : Vt. 3378.

Nothing herein, except as above, is to authorize any such railroad company to construct its road upon and along (across, Mo.) any highway (1) without the order of the supreme court of the judicial district in which said highway is situated : N.Y. 1890,565,11.

(2) Or (in cities only, N.Y.) without the consent of the municipal corporation : Me. 51,28 ; 1889,282 ; N.Y. ; Ill. 114,20 ; Mich. 3323 amt. ; N.C. ; Mo. ; Ark. 5468 ; Va. ; W.Va. 52,10 ; Tex. 4173 ; Uta. 2333 ; Col. 1885, p. 152 ; La. D. 689. See also § 8745.

(3) Of the railroad commissioners : Vt. 1888,21.

And damages must be paid abutters on such street, to be determined as in other cases : Mich., Ark. 5470, Col.

And two thirds in value of the abutters must consent : Ark. 5471.

"Railroads may cross highways in the line of the railroad ; but cannot pass along them without leave of the town : " Me.

They may not occupy streets, etc. in cities without the consent of the city being first obtained : Pa. R.Rs. 12 ; Kan. 23,47.

Nor cross them without consent of the mayor and aldermen, or they are nuisances for which the directors are personally liable : Me. 51,28 ; 1889,282.

Any county, city, or town is empowered, by a two-thirds vote of the board of commissioners, common council, or other municipal authority, to grant the use of any street or highway to a railway : Nev. 855 ; Ida. 2671 ; Cal. 5470. So, by a majority : Uta.

Under certain circumstances railroads may use county roads for their location, upon the petition of the owners of three fourths of the real estate bordering thereon : Ind. 4097.

If the supervisor, trustees, city council, or other person having jurisdiction over such highway, require further or different repairs or alterations made thereon, or if the same, in their opinion, is unsafe, they shall give notice thereof in writing to any agent or officer of the corporation, and if the parties are unable to agree respecting the same, either may apply by petition, setting out the facts, to the circuit (district) court : Io. 1263.

The county court of the respective counties of this territory shall have power to designate at least one road eight rods wide in each county, on which no railroad shall ever be run : Uta. 2333.

Provided, this section shall not be so construed as to prevent railroads from crossing, as near as may be at right angles, any street or road across which its designated lines may pass : Uta. 2333.

Public highways, bridges, or ferries cannot be appropriated to railroads, plank-roads, or any other species of road, unless express authority is granted by some constitutional provision of their charter : Ga. 719.

Provided, that every railroad company laying down any such track or tracks upon any such public street, road, alley, or other public ground, shall be responsible for injuries done to private property by such location, lying upon or near to such public ground, which may be recovered by civil action brought by the owner or owners at any time within two years from the completion of such track : O. 3283 ; Md. 23,169 ; Mon. G. L. 686.

(E) **City Streets.** In case said railroad shall cross any street or highway in any city, it shall be either above or below the grade thereof, at such distance as shall not interfere with the free and uninterrupted use of said streets or highways ; provided further, that the common council of any city may grant permission to said company to cross such streets or highways at grade : N.J. R.Rs. 102 ; Suppl. 19 ; 1887,167.

Provision is made for railroads elevating or depressing their lines in cities with the consent of the council, and for issuing stock and bonds to pay therefor, and charging reasonable special rates : Pa. 1887,162.

Any railroads crossing a highway leading from a city to a public cemetery must either pass under or over such highway : O. 3284.

Such corporation, with consent of the city council of any city or town in this state in which said depot is located, shall have the right to lay its tracks to make necessary connection with all railways desiring to use such depot upon the streets or alleys of said city, and by and with the consent of such city council may erect such depot upon or across any such street or alley, but no railroad track can thus be located, nor can such depot be so erected, until after due injury to property abutting upon the streets or alleys upon which such railway track is proposed to be located or such depot is proposed to be erected has been ascertained and compensation made in the manner provided for taking private property : Io. 1884,139,3.

In every city, town, or village of this state, where two or more railroads do now or shall hereafter terminate, the said railroad company or companies shall make application to the corporate authorities thereof for permission to connect their roads within the corporate limits of said city, town, or village, subject to the municipal regulations thereof, and if the same shall be refused, it shall be lawful in all such cases for said railroad company or companies to make such connection outside of the limits of such city or town, by the most direct and practicable route, and to procure the right of way, as provided for in this article : W.Va. 52,13.

Whenever a private corporation is authorized to appropriate any public highway or grounds, as mentioned in the last section, if the same be within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street, or alley, or public grounds within such town as the local authorities mentioned in the last section and having charge thereof shall designate ; but if such local authorities shall fail or refuse to make such designation within a reasonable time, when requested, such corporation may make such appropriation without reference thereto : Ore. 3243.

Whenever such public highway is taken by a private corporation by agreement with the local authorities, such corporation may place such gates thereon, and charge and receive such tolls thereat, as such local authorities may consent to ; otherwise such corporation shall not place any gate or other obstruction on the public highway, nor charge or receive any toll : Ore. 3244.

(F) **Water.** Railways have power to construct their road across and along or upon any stream (not navigable, Md.) of water, watercourse, street, highway,<sup>b</sup> plank-road, (railroad, Ind., Ark., Cal., Nev., Wash., Uta., see § 8744,) turnpike, or across any of the canals of this state, which the route of its road shall intersect or touch : Vt.<sup>a,b</sup> 1888,21 ; Ct.<sup>a,b</sup> 3476 ; N.Y. 1890,565,4 ; Ind. 3903 ; Ill. 114,20 ; Mich. 3323 amt. ; Wis. 1828,1836 ; Kan. 23,47 ; Md. 23,173 ; W.Va. 54,50 ; N.C. 1957 ; Mo. 2543 ; Ark. 5447 ; Tex. 4170 ; Cal. 5465 ; Nev. 851 ;

Wash. (Hill) 1572; Dak. 1879,46,9; Ida. 2666; Uta. 2333; Ga. 1689(i); Fla. 39,10; N.M. 2665(5); Ariz. 313(5); Oka. 1035; but the company shall restore the stream, or watercourse, street, highway, plank-road, and turnpike thus intersected or touched to its former state, or to such state as not unnecessarily to have impaired its usefulness: Ct.; N.Y. 1890,565,11; Ind.; Ill.; Mich. 3384 amt.; Wis. 1836; Kan.; Md.; W.Va.; N.C.; Mo.; Ark.; Tex.; Cal.; Nev.; Wash.; Dak. ib. 15; Ida.; Uta.; N.M.; Ariz.; Oka. 1043.

So as not to interfere with the free use of the same: Ind., Ark. In such manner as to afford security for life and property: Ind., Cal., Nev., Wash., Uta.

A company may, whenever it is necessary in the construction of its road to cross a road or a stream of water, divert the same from its location or bed; but the company shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness: O. 3284; Md. 23,173; Mon. G. L. 693.

So, by a suit in equity, with provision for damages, new road, etc.: W.Va. 52,11.

Such corporation shall be liable for damage caused by the diversion of any stream: Md. 23,173.

The corporation is authorized, in the construction of its road, to cross navigable streams or waters, but in the erection and construction of bridges, trestles, or other structures must not impair the navigation of such streams or waters; and the corporation is also authorized to use or to cross or to change public roads when necessary in the building, construction, or maintenance of its roadway or track, but must place the public road used or crossed or changed in a condition satisfactory to the authorities of the county having control thereof; but where practicable the track of the railroad must go under or over the public roadway: Ala. 1581.

No railroad can be made across tide-waters where vessels can navigate without special permission (1) of the legislature first obtained: Me. 51,6. (2) Of the commissioners: S.C. 1530.

Nothing in this act contained shall be construed to authorize the erection of any bridge or any other obstruction across, in, or over any stream or lake navigated by steam or sail boats at the place where any bridge or other obstructions may be proposed to be placed: N.Y. 1850,140,28; 1887,724,5; 1890,565,11; Ill. 114,20; W.Va.; N.C.; Mo.; Tex. 4172.

So, bridges over navigable streams must have a draw: N.J. Suppl. R.Rs. 17; N.M.

"May not impede or obstruct navigation:" Wash. (Hill's Codes) 1539; La. D. 691.

A railroad may carry its road above, across, or below any railway, canal, or watercourse when necessary: Io. 1265; Neb. 1,16,86; Va. 1094; W.Va.; Ida. 1891, p. 32.

And change the channel thereof: Neb., Va., W.Va.

But must construct its crossing so as not to unnecessarily impede travel or navigation: Io. 1265; Neb.; Mich.; Va.; W.Va.; Ida.

It is liable for the damages occasioned to any corporation or person injured by reason of such crossing: Io., Va., W.Va., Ida.

When it is necessary or proper to build a railroad under ground, or to bridge any waters, a railroad corporation may enter and acquire such land or water as is necessary, with the necessary foundations and structures, and acquire rights or easements accordingly. Tunnels must be kept secure above, and the surface restored so far as possible to its former condition, except as is necessary for ventilation. If constructed underneath any street in a town, the consent of the owners of one half in value of the property bounded on the line of such street, and of the town authorities, must be obtained, or failing that the decision of three commissioners appointed by court.

Railroads so constructing a road are liable for all damages sustained by reason of the construction of such tunnel : N.Y. 1890,565,16.

For special statutes of water, riparian land, etc., see N.J. Suppl. R.Rs. 32 ; Kan. 23,72.

Provision is made for railroads using the right of way of canals with the consent of the canal company : Ind. 4095.

(G) **Bridges.** (See also § 8812.) A railroad may construct its bridges to suit ordinary travel, and demand reasonable tolls therefor approved by the county commissioners, but not if erected within one mile of a toll bridge previously constructed : Minn. 2528.

All streams shall be safely bridged, or (if the county court so order) ferries be provided : Ore. 3246 ; Wash. 2462.

With drawbridges, if necessary : N.M.

When it shall be necessary in the construction of a railroad to erect a bridge or arched culvert over any highway, street, turnpike, or plank-road, it shall be sufficient to construct the same so as to give a clear passageway of twenty feet or two passageways of fourteen feet each : Wis. 1837 ; Dak. 1879,46,16 ; Oka. 1044.

All bridges over canals must be twelve feet clear above the water line : Md. 23,177.

When a railroad crosses a canal or any navigable water it shall file with the board of public works a plan of the bridge and other fixtures of the crossing, which board must approve the plan ; if it disapprove, there is an appeal to the circuit court, which appoints an engineer to examine and prescribe the plan and condition thereof, so as not to impede navigation, which report is confirmed by the court : Md. 23,177.

Any railroad company organized under the provisions of this chapter may construct its railroad across navigable waters when said railroad company shall have filed in the office of the secretary of this state a sworn statement of a competent engineer, approved by the railroad commissioners and the president and treasurer of said railroad company, that there has been expended in the construction of their railroad in this state a sum equal to ten thousand dollars for each mile of their said railroad within this state between either terminal point in the location of said road and the proposed location of said bridge ; *provided, however*, that no bridge shall be constructed across any river or harbor nearer the sea than some existing bridge across such river or harbor ; and further *provided*, that all such bridges shall be constructed in such manner, and of such materials and with draws of such width for the passage of vessels, as the railroad commissioners of this state shall authorize and direct ; but nothing herein shall be construed to authorize any railroad company to construct or use a bridge for any but railroad purposes : Ct. 3441.

Every such corporation shall maintain and keep in good repair all bridges, with their abutments, which it may construct for the purpose of enabling its railway to pass over or under any turnpike, highway, canal, watercourse, or other way : Ct. 3511 ; Io. 1266 ; S.C. 1498 ; La. D. 691 ; Oka. 1067.

Whichever goes over the other, road or railway, must maintain the new bridge : Ct. 3481.

Every such corporation shall be liable for all damages sustained by any person in consequence of any neglect of the provisions of this chapter : Io. 1267.

NOTES. — <sup>a</sup> With the consent of the railway commissioners. There is an appeal from the commissioners to the superior court in favor of either party aggrieved : Ct. 3471 ; 1889,212. <sup>b</sup> "Highway" only, in Vermont and Connecticut.

§ 8747. **Petition and Notice.** For the purpose of acquiring such title, such company (or either party, N.M.) is to present a petition to a court of record <sup>a</sup> for such county : Vt. 3359 ; N.J. R.Rs. 100 ; Pa. R.Rs. 48 ; Mich. 3332 ; Wis. 1846 ; Minn. 2474 ; Va. 1074 ; W.Va. 42,3 ; N.C. 1944 ; Ky. 18b,1 ; Tenn. 1550 ;

Mo. 2565,2734; Ark. 5458; 1885,107,13; Tex. 4182; Ore. 3258; Nev. 858,862; Wash. 1890, p. 295; Mon. G. L. 685; Wy. 548; Uta. 2336; Fla. 39,14; La. D. 698; N.M.<sup>a</sup> 2667,2713; Oka. 1054.

Said petition must be in the name of the company, signed by its directors or attorney, and sworn to; contain a description of the real estate; state that it is a railroad constructed or that it has the intention in good faith to construct and maintain a railroad from and to places named; that the capital stock has been in good faith subscribed as required by law; that survey of the route has been made, and a map filed as herein required, and location signed by a majority of the directors (except in Wis., Fla., N.M.); that the property is required for the purpose of constructing, operating, or repairing the route, or its appurtenances; that the taking thereof is necessary for public use: Mich. 3332; Wis. 1846; N.C. 1944; Fla. 39,14; N.M. 2713; and that the company has not been able to acquire title thereto, and the reason why: Mich., N.C., N.M., Fla. So, in effect, in: Nev. 858; Uta. 2336.

It must describe the land to be taken by map or otherwise, and give the names of the supposed owners, encumbrances, and other persons interested, so far as can be ascertained by reasonable inquiry or from the public records: N.J.; Mich.; Wis.; Minn. 2474; W.Va. 42,5; N.C.; Ky.; Tenn. 1550; Mo.; Ark. 5460; Tex. 4182; Ore. 3261; Wash.; Wy. 548; Fla.; La. D. 698; N.M.

It must also state the purpose to which the said estate is intended to be appropriated, and may state the sum of money which the applicant is ready to pay therefor to the owner of such parcel: W.Va. 42,5.

If the damage is grievous, and could be avoided without serious injury to others, the landowner has his remedy by petition to the county commissioners, who may change the location: Mass. 112,103. See § 8757.

In New Hampshire there is a peculiar process for laying out a railway. The provisional corporation files in the office of the clerk of the supreme court a petition for a decision of the question whether the public good requires the proposed railway. A justice thereupon orders such notice to be given of the petition as he deems reasonable; and after notice and hearing, if it appears that the capital stock has been subscribed, and all preliminary steps taken, the court refers the petition to the board of railway commissioners, or to a board of three referees, appointed by the court, as they shall deem best, to find a report upon the facts. Such board accordingly gives notice and hearing to all parties and reports to the court, which thereupon, after a final hearing, may decide the question; and if they decide that the public good requires the proposed railway, the secretary issues a certificate of incorporation: N.H. 156,8-14.

Before the railroad commissioners shall approve the laying out of any railroad, or the taking of any real estate for the purposes of said road, or any change or alteration of the same, they shall give reasonable notice to all persons having an interest in such estate to attend and be heard: Ct. 3420.

In Kansas there is a special process for condemning lands by railways as follows. The railway may apply to the board of county commissioners, which lays off the route, filing a report with the county treasurer, and the railway must pay the respective damages to such treasurer within ninety days of such filing, and thereupon will have a right to a perpetual use of the land. The county commissioners give notice by publication thirty days before laying off the route, and an appeal may be taken from them on the damages to the district court; but such appeal does not delay the prosecution of the work if the company pays or deposits the amount assessed with the county treasurer, and executes a bond for further damages and costs; or instead of applying to the county commissioners the railway may apply to the district court to appoint three commissioners, freeholders and resident in the county, who shall be sworn and perform the same duties as the county commissioners, and the subsequent proceedings are similar: Kan. 23,234-240.

If, however, such person or company has actually taken possession of such land, occupying it for the purposes of internal improvement, the owner of such land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided; or he may sue for damages in the ordinary way, in which case the jury shall lay off the land by metes and bounds and assess the damages, as upon the trial of an appeal from the return of a jury of inquest: Tenn. 1571.

The persons in occupation of said tract or tracts of land, and those having any right, title, or interest therein, whether named in the petition or not, shall be defendants thereto, and may appear and show cause against the same, and may appear and be heard before the commissioners herein provided for, and in proceedings subsequent thereto, in the same manner as if they had appeared and answered said petition: Uta. 2337; Nev. 859.

**Notice.** The company must generally give notice to all occupants of land over which such proposed line runs: Me. 51,20; N.Y. 1890,565,6; N.J. R.Rs. 100; Ind. 3907; Mich.; Kan. 23,49; W.Va. 42,6; N.C. 1952; Mo. 2564; Nev. 861; S.C. 1550.

Thus, a copy or abstract, or notice, of such petition, with notice of the time and place when and where the same will be presented to such court, must be served on all persons whose interest will be affected by the proceeding, at least ten<sup>6</sup> days prior to the (hearing, Uta.) presentation of the same to the court: Me. 51, 20; Mich. 3332 amt.; Wis. 1846; Minn. 2475; Va. 1075; W.Va. 42,6; N.C. 1944; Tenn. 1551; Mo. 2735; Ark. 5458; Nev. 861; Wash. 1890, p. 295; Wy. 548; Uta. 2338; La. D. 699,700; N.M.; Oka. 1054.

Or it may be published in a newspaper in the county: Me.

Service as in other suits: Ore.; La. D. 699.

Thirty days' notice in writing must be given landowners, and if they do not reply they are presumed to consent, and the railway may enter; provided that the owner may move for compensation as hereinafter provided: S.C. 1550.

Personal service must be made if the landowner be of age and within the state (or county, Va., W.Va.): N.J., Ind. Mich., Minn., Va., W.Va., N.C., Ark., Uta., N.M., Tex. 4190; Ore. 3260; Oka.

Personal, or by publication in some newspaper designated by the court: Wis.; Wy. 548.

If without the state, service must be made upon his agent, if he has one in the state as above, or by publication, and so by publication when the person or his residence is unknown: Vt. 3360; Mich.; Neb. 1,16,100; N.C.: N.M.; Tenn. 1551-2.

Only by publication: N.J., Io. 1247-8, Minn., Mo., Ark., Tex., Nev., Uta., Wash., Ore. 3261, Oka.

So, if without the county: Va., W.Va., Nev., Wy., Ind., Io.

If the residence of the person is known, a copy must be mailed him: N.C.

Want of service renders the subsequent proceedings void as to the persons not served: Minn.; Tenn. 1553; Mo. 2734.

When the provisions of the preceding section have been complied with, and when the board has ascertained that the authority and consent required by section ninety-four have been obtained, the clerk of the board, upon its order, shall certify the same to the secretary of the commonwealth; and no corporation shall begin to construct its road until such certificate is filed with the secretary: Mass. 112,86. See § 8740, p. 376.

**Hearing.** Upon hearing said petition the court appoints the commissioners, satisfactory proof being made that all parties interested have had notice (that the public interest requires the prosecution of the enterprise, Minn., N.C.) and that the lands taken are necessary therefor: Minn. 2477; N.C. 1945; Nev. 862; Uta. 2339.

The court may in its discretion limit the easement acquired: Minn.



If any owner shall be of opinion that the quantity of land sought to be purchased by any corporation exceeds that which is reasonably necessary for the purpose intended by the company, it shall be lawful for him to file a special plea, setting forth this fact; and in such case the jury shall determine, not only the value of the land to be expropriated, but also the extent of land over which the company may exercise the forced expropriation; the whole always subject to the decision of the supreme court on appeal: La. D. 704.

NOTE. — <sup>a</sup> The District court: Minn., Nev., Wy., Mon., Uta., La., N.M., Oka. The superior court: N.C., Wash. The county court or judge: Ky., Tex. Any justice of the peace of the county: Md., Mo. The Circuit court: Wis., W.Va., Tenn., Mo., Ark., Ore., Fla. The supreme court: Vt., N.Y., N.J. Common Pleas: Pa. See Vol. I., § 551. <sup>b</sup> Fourteen: Me. Five: Tenn.

§ 8748. **Map of the Location**, or lands taken, of the road proposed, must (before construction, except in Maine) be filed as a map or profile in the office of the clerk or recorder of every county (or town, Vt., Ct.) through which it runs: Mass. 112, 89; Me. 51,6 & 8; Vt. 3355; N.Y. 1890,565,6; Ct. 3468; Ind. 3902,3907; Mich. 3321 amt.; Wis. 1846; W.Va. 54,65; Kan. 23,48; N.C. 1952; Mo. 2564; Ark. 5442,5483; Tex. 4248; Nev. 877; Cal. 5466; N.D. 1890,130; Ida. 2667; Uta. 2357; N.M. 2683.

And also, *after location*, a map is filed with the secretary of state, etc.: N.H. 157,8, 158,3, Me., Ct., N.J. R.Rs. 99, Ind. 3929, Ark. 5483, W.Va., Nev., Ida., Uta., N.M.

Or general land office; Tex.

With the county clerk: Ark. 5446.

With the railroad commissioners: Me., N.Y.

A profile and map must be filed within one year after such location has been used and the road constructed therein: N.H., Me., Mass. 112,142.

Also within a reasonable time after the road has been located: Ind., Ark., W.Va., N.C. 1977, Tex., Nev., Cal., Ida., Uta., N.M.

And "within two years:" Me., Vt., Ark. 5446; 1885,37. After the articles (§ 8522) were filed: Me., Vt.

And also a specification of the line, with grades and curves: Ind., Ark., Tex.

Before proceeding to construct the road, the corporation must furnish a plan of the land to the owner: Mass. 112,102; Vt. 3361. See also last section.

The directors shall prepare a map of the proposed route on an appropriate scale, with a profile thereof on a vertical scale of ten to one as compared with the horizontal scale, and shall procure the report of a skilful engineer, based on actual examination and survey: Mass. 112,38; Me. 51,6; showing the kind and amount of excavation, filling, bridging, and masonry required, the proposed grades, the number of highways and other railroads, if any, and of navigable streams and tide-waters, if any, to be crossed, and the manner proposed for crossing the same, the general profile of the surface of the country through which the road will pass, the feasibility of the route, the manner of constructing the road, and a detailed estimate of the cost of construction: Mass.

When a terminus named in the articles of incorporation is a county upon the line or boundary of the state, the president and directors of the company, upon the location of the road in that county, shall make and acknowledge a certificate definitely fixing the location in such county, and file the same with the secretary of state: O. 3271.

The directors shall submit said map and report to the mayor and aldermen of every city and to the selectmen of every town named in the articles of association; and such mayor and aldermen or selectmen shall thereupon appoint a place and time for a hearing, of which notice shall be given by publication in one or more newspapers published in the county for two successive weeks, the last publication to be at least two days prior to the hearing, and by posting copies of the notice in two or more public places in the city or town at least two weeks before such hearing: Mass. 112,39.

The map is submitted to the railway commissioners with a petition for approval of location: Me.

So, it must be approved by a board consisting of the attorney-general, secretary of state, and the railroad commissioner: Mich. 3321 amt.

They appoint a day for hearing, after reasonable notice, and approve the location and find whether or not public convenience requires the construction of such road: Me. 51,6.

When the mayor, aldermen, or selectmen, after such notice and hearing, agree with the directors as to the route, such agreement shall fix the same; and said mayor, etc. shall give the directors a certificate setting forth such route: Mass. 112,40.

If they fail to agree, the directors petition the railway commissioners to hear the parties, after notice to said mayor or selectmen, and fix the route: Mass. 112,41.

§ 8749. **Assessment.** The damages are estimated (a) by special commissioners: Vt. 3359; R.I. 158,43; Ct. 3464; N.J. R.Rs. 100; Pa. R.Rs.<sup>b</sup> 48; Ind. 3907; Mich. 3332; Wis. 1847; Io. 1244; Minn. 2477; Kan. 23,240; Neb. 16,97; Va. 1076; W.Va. 42,10; N.C. 1945; Ky. 18b,1; Mo. 2566; Mon. G. L. 685; Wy. 548; Ore. 3258; Tex. 4183; Nev. 862; Uta. 2339; Ga. 1689(1); N.M. 2667; Oka. 1054.

(b) By the county commissioners: Mass. 112,95; Me. 51,19 & 22; Kan. 23,234. See p. 393.

(c) By a jury: Md. 23,167; Ark. 5461; Tenn. 1554; Wash. 1890, p. 297; La. D. 700; Fla. 1887,3712. "Or a jury." Mo. 2734.

(A) In detail, such special commissioners are, —

(1) Seven disinterested freeholders appointed by court: Pa. Three disinterested persons: Minn., Wy., Nev., Uta., N.M.

(2) Three freeholders resident in the county<sup>d</sup> (except in Ct.), (or some adjoining county, N.J.), appointed by court: Vt.<sup>e</sup>; Ct.; N.J.; Kan. 23,87; Ind. Mich. 3334; Wis.; Minn.; N.C.; Ky.; Mo.; N.M. 2667,2714; Ore.; Nev.; Tex.; Mon.; Wy.; Oka.

One of whom shall be selected from among the persons, if any, named for that purpose by said company, and one shall be selected from among the persons, if any, named on the part of any of the defendants: Nev. 862.

(3) Six freeholders appointed by the sheriff of the county: Io. 1244; Neb.

(4) Five, any three of whom may act: Va. 1074; W.Va. 42,10 & 13.

(5) So, three assessors, chosen one by each party and one by the other two (§ 8747): Ga. 1689(1).

(C) Such jury is a struck jury, each party striking off six names alternately from the panel of twenty-four: Mich. 3334.

So four from a panel of twenty: Md.

So four from a panel of thirteen: W.Va. 42,11.

The verdict may be rendered by three fourths of a jury of twelve: La.

The commissioners or jury are sworn: N.J.; Pa.; Ind.; Mich. 3335; Wis.; Minn.; Md.; Va. 1077; N.C.; Ky.; Mo. 2736; Tex. 4184; Nev. 863; Ore.; Wy. 548; Uta. 2341; N.M. 2715; Oka.; W.Va. 42,12; Tenn. 1560; Ga.

Two members of said board, of which the commissioner of railroads shall be one, shall constitute a quorum for the transaction of business: Mich. 3321.

In New Hampshire the process is by petition to the railroad commissioners, notice given to all the landowners, and they award the damages jointly with the selectmen of the town in the same manner as the county commissioners are required to do in the case of highways. If the commissioners and selectmen fail to agree upon damages, a justice of the supreme court appoints three disinterested men resident in the county to make the appraisal, as in other states: N.H. 158,9-16.

When either party applies for a jury to assess the damages, the proceedings shall be the same as are provided for the recovery of damages in the laying out of highways. Upon such application, the prevailing party shall recover legal costs : Mass. 112,100.

Instead of having commissioners appointed in the manner prescribed, any company incorporated for a work of internal improvement may apply to any county court, which shall thereupon appoint five disinterested holders, who, or any three or more of whom, shall constitute a board to ascertain a just compensation to the owners of land upon the line of improvement within the said county : Va. 1085.

*Provided*, that any person or persons or company whose estate or interest is to be affected by the proceedings may demand and have from such court, at the time of hearing of said petition, a struck jury of twelve freeholders of said county to ascertain and determine the necessity for taking such lands, franchises, or other property, and to appraise and determine the damages or compensation to be allowed therefor : Mich. 3334 ; W.Va. 42,1.

Such a jury is always summoned : Fla. 1887,3712.

The jurors shall not be interested in the same or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff : Tenn. 1556.

The jury will consist of five persons, unless the parties agree upon a different number, and either party may challenge for cause, or peremptorily, as in other cases : Tenn. 1558.

NOTES. — <sup>a</sup> At the option of the railway company. <sup>b</sup> When the owner and the railway are unable to agree. <sup>c</sup> Appointed by two judges of the supreme court. <sup>d</sup> And one must be resident in the town.

**§ 8749a. Notice to Landholders ; Report.** The commissioners shall give from three to twelve days' notice to the occupants or owners of the lands of the time and place when and where they will attend to such appraisal : Vt. 3360 ; Pa. R.Rs. 48 ; Wis. 1847 ; Io. 1245 ; Mich. 3335 ; Neb. 1,16,98 ; Tenn. 1559 ; Tex. 4186-7 ; Fla. See also § 8747.

The court gives notice, before confirming the report, in the same manner as to parties in civil cases : Ky. 18b,3.

No notice shall be required to be given of the appraisal of unoccupied lands, unless the owner resides in the state, or has some known agent or attorney residing therein : Vt. 3360.

Said commissioners or jury shall examine the place, hear the parties, and make report of their proceedings (in the same manner as county commissioners are required to do in the case of highways, N.H.) : N.H. 158,14 ; Mass. 112,95 ; Me. 51,22 ; Vt. 3360 ; Ct. 3464 ; N.J. R.Rs. 100 ; Pa. R.Rs. 48 ; Ind. 3907 ; Mich. 3335 ; Wis. 1848 ; Io. 1244-5 ; Minn. 2478-9 ; Neb. 1,16,97 ; Md. 23,167 ; Va. 1078 ; W.Va. 42,14-15 ; N.C. 1700,1946 ; Ky. 18b,2 ; Tenn. 1561 ; Mo. 2566, 2736 ; Tex. 4185,4191,7 ; Ore. 3258 ; Nev. 863-4 ; Wy. 548 ; Mon. G. L. 685 ; Uta. 2341-2 ; S.C. 1552 ; Ga. 1689l ; Fla. 39,16 ; N.M. 2667 ; Oka. 1054.

There may be no argument of counsel before them : Tenn.

The report must be confirmed by court : Pa. ; Mich. 3336 ; Md. ; Va. 1079 ; W.Va. 42,18 ; N.C. ; Ky. 18b,4 ; Tenn. 1563-4 ; Ore. ; Nev. 866 ; Uta. 2344 ; Fla. 1887,3712 ; N.M. 2716.

It is recorded in court : Me. ; Wis. 1850 ; Minn. 2479 ; Neb. ; Md. ; Va. ; N.C. ; Ky. ; Tenn. ; Mo. ; Tex. 4197,4203 ; Uta. 2342 ; Ga. ; Fla. ; N.M. 2717 ; Oka.

In the county record office : Mich. 3337 ; Neb. ; Nev. 867 ; Wy. 548 ; Oka.

When an appraisal is made, the commissioners shall within twenty days notify the owner, if known, of the amount thereof, and deliver to the company a written statement of the same, with a description of the land or other property so by them appraised, which shall be recorded in the town clerk's office : Vt. 3363.

The commissioners, upon condemnation, shall report any contract that may have been made between the company and the landowner in relation to the proposed work or damages resulting therefrom : Va. 1090.

If good cause be shown against the report, or if it be defective or erroneous on its face, the court, as may seem to be proper, may set it aside, or recommit it to the same commissioners for further report ; or other commissioners may be appointed, in the manner hereinbefore provided, with or without further notice, as the court may order. If the commissioners report their disagreement, or fail to report in reasonable time, other commissioners may in like manner be appointed, and so again, from time to time, as often as may be necessary : W.Va. 42,19.

§ 8750. The appeal from the assessment provided for in the last section is as follows : (1) To the superior court : Vt.<sup>a</sup> 3366 ; N.J. R.Rs. 101 ; Ind. 3907 ; Wis. 1849 ; Io. 1254 ; Kan. 23,239 ; Neb. 1,16,97 ; Mo. 2566 ; S.C. 1553 ; Ga. 1689(1).

(2) To a jury, as in the case of laying out highways : Mass. 112,99,100.

So, to a jury of the same court : Pa. R.Rs. 50 ; Wis. ; Minn. 2488,2490 ; W.Va. 42,17 ; Ky. 18b,5 ; Mo. 2739 ; Tex. 4202 ; Mon. G. L. 685 ; N.M. 2667,2717 ; Oka. 1054.

So, if the court do not confirm, another appraisement is had : Ind. 3907 ; Mich. ; Md. 23,167 ; Va. 1080 ; N.C. 1946 ; Tenn. 1565 ; Mo. ; Nev. 865 ; Uta. 2343 ; N.M. 2717.

(3) To the supreme court : N.H. 158,17 ; Me. 51,23 ; Mich. 3337 ; Ore. 3266 ; Wash. 1890, p. 300 ; La. D. 702.

The jury is of freeholders : W.Va.

From the superior, over again to the supreme court : Neb., N.C., Oka.

So, from the county to the circuit court : Ky. 18b,6.

**Bond for Appeal.** But notwithstanding such appeal, the railway may enter and go on with the work (1) on giving bond, paying or securing costs and damages : N.H. 158,18 ; N.J.<sup>a</sup> Suppl. R.Rs. 11 ; Minn. 2489 ; Kan. ; Ky. 18b,7 ; Tenn. 1568 ; Wash. 1890, p. 300 ; Ga. ; N.M. So, a bond for costs of appeal only : N.M.

(2) Without bond : Ind. ; Mich. ; Mo. ; Ore. ; Mon. Upon paying or tendering the damages : Mass. 112,98 ; N.J. R.Rs. 101 ; Ind.

(3) And upon depositing the amount assessed : Io. 1255 ; Wis. 1850 ; Kan. ; Neb. ; Va. 1081 ; W.Va. 42,20 ; N.C. ; S.C. ; La. D. 702 ; Oka.

Such report shall be final, unless either party aggrieved shall appeal therefrom within thirty days after notice thereof : Wis. 1849 ; Io. 1254 ; Wash. ; Mon.

Within one year after the assessment : Mass. Ten days : Ind. ; Mo. ; Tex. 4202 ; N.M. Twenty days : N.Y. ; Mich. ; Nev. ; Uta. 2344. The next term : Me., N.J. Sixty days : N.H. ; Oka.

Upon which appeal the same proceedings shall be had as on appeal from an award of damages by the county commissioners : N.H.

Either party may also appeal from the finding of the jury, and, on giving security for the costs, have a trial anew before a jury in the usual way : Tenn. 1566.

Such court shall thereupon appoint three commissioners, one of whom shall be an inhabitant of the county in which such land or property is situated ; and the decision of the court shall be final : Vt. 3366.

The appeal is tried with a jury : N.H., N.J., Wis., Minn., Mon.

It may be tried by a committee if the parties agree, otherwise by jury : Me.

If upon appeal the claimant gets no greater award, he must pay the whole costs thereof : N.H. 158,21 ; N.J. ; Md. ; Va. 1082 ; Neb. ; Mon. ; N.M. 2667 ; Oka.

The corporation shall pay all the costs of the assessment made by the commissioners and those occasioned by the appeal: N.J.; Pa. R.Rs. 57; Ind.; Mich.; Wis.; Io. 1252; W.Va. 42,21; Ky. 18b,7; Tenn. 1567; Nev. 867; Oka.; unless on the trial of the appeal a less amount of damages is awarded than was allowed by the commissioners: Mich., Wis., Io., W.Va., Tenn., Oka.

Unless the amount awarded by the commissioners or jury on appeal is less than the company offered to pay before proceedings commenced: W.Va. 42,24; Tex. 4204; Ore. 3267; Mon.; La. D. 706.

Unless the court order otherwise as to costs *since* the report: Mo. 2739.

If, prior to the assessment, the corporation shall tender to such owner an amount equal to the award afterward made, exclusive of costs, the costs of arbitration shall be paid equally by such company and such owner or guardian: Ind. 3907.

If the owner has refused the tender of damages estimated by a county commissioner, and costs, he must pay all costs of the jury and trial, etc., unless he recovers on final hearing a greater amount of damages than the sum tendered; and so of the corporation, if the damages are not reduced: Mass. 112,100.

But the owner is not so liable for costs unless the amount finally recovered equals costs and twenty-five per cent above the amount tendered: Mich. 3400.

If the damages are increased upon appeal, the corporation must pay (1) the whole amount before entering; if decreased, only the amount assessed: Io. 1258-9.

(2) The amount found upon appeal, whether it is an increase or decrease: N.Y., N.J., Mich., Wis.

But the applicant for a new trial pays costs, unless the award is increased by ten per cent: Nev. 867.

An acceptance by the landowner of the damages awarded by the commissioners shall bar his right to appeal: Io. 1256; Wash. 1890, p. 300; Ore. 3269.

No appeal shall be taken by the corporation after deposit of the amount of the award, nor shall an appeal be taken by the landholder or owner after acceptance thereof: Vt. 3366.

Parties entitled to receive the amount assessed by the commissioners may, upon tender thereof being made, receive the same, without being barred thereby from his or her appeal from the report of the commissioners: N.J. R.Rs. 101.

On appeal, no judgment is rendered except for costs. The amount of damages is entered on record, and must be paid before the corporation enters upon the land: Io. 1257.

The corporation, when the proceedings are closed, may deposit the damages with the clerk, with interest from record of the first estimation, and legal costs, in full satisfaction therefor, unless a demand had been previously made and refused: Me. 51,24.

**Tender.** A railroad desirous of acquiring any right of way or real estate for the purpose of its incorporation may, before or after commencing proceedings, tender to the owner any sum which it deems sufficient compensation, together with costs up to such time; and if it subsequently appear that the amount so tendered was sufficient, by verdict or otherwise, to pay damages and twenty-five per cent additional, and costs up to time of such tender, the corporation is entitled to all subsequent costs; otherwise, or if no tender be made, the owner of the land shall recover costs: Mich. 3400.

NOTES. — <sup>a</sup>The county court or clerk: Vt. <sup>b</sup>For the courts termed "superior" in the several states, see Table, § 551, Vol. I.

§ 8751. **Completion of Location.** (Compare §§ 8748, 8753.) The appraisal, when returned to court, has the effect of a judgment in favor of the persons in-

terested, and execution may issue at the end of sixty (thirty, Pa., Mon.) days : Ct. ; Pa. ; Wis. 1850 ; Mo. 2736 ; Wash. 1890, p. 298 ; Mon. ; Ga.

Action of debt may be brought upon it ; and it is a lien, like a mortgage, upon the railroad's property : N.J.

Upon such record, and proof that the award has been paid, the court enters a rule, which has the effect of a conveyance to the corporation : Wy. 548.

The report of the commissioners after payment of damages is or may be recorded in the registry of deeds, and is evidence of title in the corporation : N.J. R.Rs. 87 ; Io. 1253 ; Minn. 2493 ; Neb. 1,16,97 ; Va. 1091 ; Nev. 867 ; Wash. 1891,46 ; Wy. 548 ; Uta. 2345 ; Ga. ; N.M. 2717 ; Oka. 1054.

The court gives judgment upon payment into court of the damages : Ore. 3265.

Upon the payment of the damages determined upon by the commissioners, with the costs and charges thereupon accruing, by the company, the company shall be deemed to be seised and possessed of the land : Vt. 3364 ; Wis. 1851 ; N.C. 1946 ; Nev. 869 ; Wash. 1891,46 ; 1890, p. 299 ; N.M. 2667.

So, upon the deposit of the same by the company in such bank, or with such clerk of the supreme court as the commissioners direct, to the credit of the person to whom the damages have been awarded : Vt.

Whenever the right of way has been acquired as hereinbefore provided, the judgment of the court shall vest such right in the company so acquiring the same : Tex. 4208.

If the applicant has stated in his application the amount of money he is ready to pay to any owner for his interest in the real estate, or any parcel thereof, proposed to be taken, and such owner, not being under disability, consent to accept the same, and there be no lien on or conflicting claims thereto, the court shall make an order that, on such payment being made, the interest of the said owner shall be thereby transferred to the applicant, and a copy of such order, with the receipt of the said owner for the money written thereon, or annexed thereto, shall operate as a conveyance, with special warranty, and may be acknowledged for record, and recorded in like manner and with like effect : W.Va. 42,9.

Upon such payment, the title to that part of the land so paid for shall be absolutely vested in fee simple in the applicant, except that in a case of a turnpike or other road (not including, however, a railroad) the right of way only shall be vested : W.Va. 42, 18 ; S.C. 1556.

The right of way secured or to be secured to any railroad company in this state, in the manner provided by law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation : Tex. 4206.

**§ 8752. Damages.** A railway shall pay all damages occasioned by laying out, making, and maintaining its road, or by taking lands or material therefor : Mass. 112,95 ; Me. 51,19 ; La. 10. 698.

"By reason of such railroad :" Ind. 3907 ; Minn. 2478 ; Wash. 1570 (Hill) ; Uta. 2342 ; Oka. 1054.

"By the use and occupation " of the land : Md. 23,167.

"The land shall be appraised as if the railroad had not been built : " Mon. G. L. 685 ; La. ; N.M. 2667.

And a reasonable attorney's fee : Mich. 3329 amt.

When the whole of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value thereof in the market in which the same is located : Tex. 4194.

(A) In fixing the amount of such compensation, said commissioners shall not make any allowance or deduction on account of any real or supposed benefits which the parties interested may derive from the construction of the proposed railroad, or the construction of the proposed improvement connected with such road, for which such real estate may be taken: N.Y. 1850,140,16; Wis. 1848; N.C. 1946; Ark. 5462; Ore. 3240; Wash. 1890, p. 295; S.C. 1552; La. D. 701; N.M. 2715.

But special benefits to the real estate adjoining the lands so taken shall be allowed in deduction of any damages sustained by the owner to such adjoining real estate: Wis., Fla.

(B) In ascertaining and assessing such compensation, they shall take in consideration and make allowance for any benefit or advantages that in their opinion will accrue to such person or persons by reason of the construction of the railroad as proposed: Nev. 864; Wy. 548; Fla. 39,16.

"Having a due regard to and making just allowance for the advantages which may have resulted, or which may seem likely to result, to the owner or owners of said land or materials, in consequence of the making or opening of said railroad and of the construction of works connected therewith; and after having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine whether any, and if any what, amount of damages has been or may be sustained:" Pa. R.Rs. 48.

(C) Damage is given both for land taken and damages done to the residue beyond the peculiar benefits to be derived in respect to such residue: Va. 1078; W.Va. 42,14; Ky. 18b,2; Tenn. 1562; Tex. 4193,4195; Wy. 548.

In estimating either the injuries or the benefits, as provided in the preceding article, those injuries or benefits which the owner of such real estate sustains or receives in common with the community generally, and which are not peculiar to him and connected with his ownership, use, and enjoyment of the particular parcel of land, shall be altogether excluded from such estimate: Tex. 4196.

When a railroad, in laying or making its road, obstructs the access to a manufactory, place of business, or dwelling-house, it is liable for such compensation as the commissioners for determining railroad damages deem proper: Vt. 3370.

NOTE. — <sup>a</sup> Statute repealed; see § 740.

**§ 8753. Security and Payment of Damages.** The corporation is bound to pay the damages within thirty days after award by the jury, or (1) an execution issues, pending which all its right to enter or use the land is suspended: Mass. 112,101.

So, twenty days: N.J. R.Rs. 100. Sixty days: Wis. 1850.

(2) The landowner may obtain an injunction against occupation of the land: Mass. 112,104; Me. 51,25.

(3) In other states (but compare §§ 8750, 8751) the corporation cannot use the land until damages are paid: N.H. 158,18; Vt. 3354; N.J.; Ind. 3907; Mich. 3329 amt., 3337; Wis. 1850; Io. 1244; Minn. 2483; Neb. 1,16,81; Md.; Va. 1078,1083; W.Va. 42,18; Ky. 18b,7; Mo. 2566; Ark. 5463; Tex. 4205; Nev. 869; Wy. 548; Uta. 2346; Fla. 39,17; N.M. 2667; Oka. 1054.

Or secured: Neb.

And if it fail to pay within sixty days its right lapses: Mich., Minn.

So, thirty days: Ark. 5466; Uta. 2346.

If no such application (for appeal) is made, the commissioners, after the expiration

of said year, may issue warrants of distress to compel the payment of the damages with costs and interest; and if the corporation, for thirty days after such warrant has issued, neglects to satisfy the same, all its right and authority to enter upon or use the land or property, except for making surveys, shall be suspended until payment thereof: Mass. 112,99.

So, when no estimate is made within the three years, the owner may maintain trespass, or have any remedy herein provided: Me. 51,19.

**Security before Entry.** (And see § 8750.) No railroad corporation can enter upon or use the land located for the use of the road, except to make surveys, until (A) security is given (if requested, Mass.) for the damages and costs: Mass. 112,97; R.I. 158,43; Ct. 3464; Pa. R.Rs. 47.

(B) Until payment is made or tendered: N.H. 158,18; N.J. R.Rs. 99; Pa.; Ind. 3903; Md. 23,167; Tenn. 1570; Mo. 2736; Mon. G. L. 685; Tex. 4179.

Or security given on appeal, as in § 8752: N.H., Tenn.

Notice that such security will be given upon written request must be served on all landowners in the state before the assessment: R.I.

In detail, the commissioners shall, if requested by the owner, require the corporation to give security to their satisfaction for the payment of all damages and costs which may be awarded by them or by a jury for the land or other property taken: Mass. 112,97; Me. 51,19.

And if, upon petition of the owner and notice to the adverse party, the security appears to them to have become insufficient, they shall require the corporation to give further security to their satisfaction: Mass. 112,97.

And all its right or authority to enter upon or use the land or other property, except for making surveys, shall be suspended until it gives the security required: Mass. 112,97.

So, when it neglects to give security for more than thirty days, the owner has his remedy by injunction: Me. 51,19.

Where the parties cannot agree upon the amount of damages, the company shall tender a bond with two sufficient sureties to pay such damages as shall be agreed upon or assessed: Pa. R.Rs. 49.

A railroad may proceed with the work on depositing money in court, the sum to be fixed by the judge: Ark. 5464-5.

§ 8754. **The Owners and Claimants of Land.** (A) Any guardian or trustee may usually release all damages, as if he held the land of his own right: Mass. 112,106; Me. 51,19; Ct. 3439; Ind. 3907; Mich. 3330; Wis. 1856; Io. 1246; Neb. 1,16,96; N.C. 1956; S.C. 1555; Mo. 2561; Nev. 857; Fla. 39,23; N.M. 2666; Ariz. 315; Oka. 1056.

But an order of court is necessary: Ind., Mich., Wis., Io., N.C., Mo., Nev., Fla., N.M., Ariz.

Or the guardian may be party to the proceedings: Ct.; Minn. 2475; Va. 1075; W.Va. 42,7; Mo. 2734; Tex. 4189; Ga. 1689(1).

A petition must be filed and land condemned if the owner or owners, or any of them, be an infant, feme covert, etc.: Md. 23,167.

If the owner or his residence is unknown, or if he is a minor and has no guardian, or is not resident in the state, the damages awarded shall be paid to the state treasurer: N.H. 158,19; La. D. 703.

To the Ordinary: Ga.

(B) If the ownership is unknown or in doubt, the money is paid into court: Vt. 2367-2369; Mich. 3338; Minn. 2484; W.Va. 42,23; N.M. 2718; Oka. 1057.



If there are adverse and conflicting claimants to the money, the court may direct it paid into court, pending determination of said questions: Ind. 3908; Mich. 3338; Va. 1084; N.C. 1947; Nev. 864; N.M. 2718.

If the owner of the lands or estate is a married woman, an infant, idiot, or insane, or does not reside in this state, or is not known, the company shall pay the same to the lawful owners when demanded, with interest thereon, which damages and interest shall be a specific lien upon the real estate of such company, and be preferred before any other demand against said company: Vt. 3365.

All judgments directing the expropriation of lands to corporations shall be valid against all persons, married women, minors, or persons interdicted: La. D. 707.

(C) When persons have different interests in the same property, as in estate for life or years with remainder to another, contingent remainder, executory devise, or power of appointment, the damages recovered are held in trust for the benefit of the parties according to their interests, the annual income to the person having immediate estate: Mass. 112,107.

So, persons having any interest in the land have the rights and remedies of owners to the extent of the same: Me. 51,19.

When a railroad corporation takes lands subject to dower, or to an estate for life or years, the commissioners shall appraise the damages to such right of dower, or other estate for life or for years, and also the damages to the reversionary interest: Vt. 3362.

When land taken is mortgaged, the damages are paid first to the mortgagee in reduction of his mortgage, and balance to the second or subsequent mortgages in reduction, or to the owner after all mortgages are satisfied: Mass. 112,109.

So, in effect, in others: Fla. 39,19; La. D. 710.

When a railroad has acquired title to any real estate subject to any mortgage or other lien, and proceedings have been afterwards commenced by the mortgagee to enforce the same, the court appoints three commissioners to appraise the value of said real estate at the time the railroad takes title; and said appraisal shall stand as the maximum of amount of the encumbrances chargeable to the real estate so taken, and judgment shall be rendered against the railroad for an amount not exceeding it; and thereupon the railroad shall hold the land free of such mortgage or lien: Wis. 1853.

(D) If, at any time after an attempt to acquire title by appraisal of damages or otherwise, it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect such title by condemnation, in the same manner as if no appraisal had been made: Me. 51,15; N.Y. 1890,565,7; N.J. Suppl. R.Rs. 8; Ind. 3910; Mich. 3340 amt.; Wis. 1852; N.C. 1951; Nev. 868; Wy. 548; N.M. 2720; Wash. 1891,46; Fla. 39,20.

Or by purchase: Me., N.Y., N.J.

If land occupied by a railroad was not laid out and the damages appraised at the time of its construction, the road shall not be constructed, but the land may be set off and the damages appraised as should have been done originally; and the costs of the proceeding shall be assessed by the railroad commissioners, and paid by the proprietors of the railroad: N.H. 158,25.

Any railroad company, owning a railroad which has been constructed and is being operated over land to which it has not acquired title, may take such land within the limits of its location at any time within two years after the approval thereof by the railroad commissioners: Ct. 1889,149.

§ 8755. **Limitation of Suits.** No application to the county commissioners, or other action for damages for land or other property taken, shall be sustained by the railroad, unless made within three years from the time (1) of taking the same: Mass. 112,96; Me. 51,19.

Within one year thereafter : Tenn. 1572. Two years : La. D. 698.

(2) Within three years after the road "shall be in operation : " Pa. R.Rs. 99.

[And] within five years after entry for purposes of construction : Pa.

Within two years after the approval of the route by the railroad commissioners : Ct. 3439.

If proceedings commenced fail for a cause not affecting the merits, they may be commenced anew within one year thereafter : Me. 51,19.

If not commenced within three years, the landowner may proceed in equity, and have a decree from the court ; and a summary injunction is granted, to become absolute if payment be not made : Me. 51,25.

No action shall be brought for damages before entry upon the land ; and if the location shall be changed before the land is entered upon for the purpose of building the road, no damages shall be paid : N.H. 158,22.

An application for damages sustained by the owners of a private way, by reason of a railroad crossing the same, shall be made within three years from the time when the way is so obstructed, and not afterwards : Mass. 112,137.

When the time for locating or constructing a railroad is extended by statute, the unsettled claims for land damages are revived : Mass. 112,110.

This does not include costs of a road already constructed, where a new location is rendered necessary by reason of defect : Mass. 112,110.

When suit is brought testing the right of a corporation to construct its road on a particular location, applications to the county commissioners for damages for taking land may be made at any time within one year after its final determination upon the merits or suit brought within the same period : Mass. 112,111.

But if a suit has failed for defect of form, another suit must be brought within six months after its determination : Mass. 112,111.

When property has been taken by a railroad without appraisal, the owner may sue within six years after entry : Vt. 3371.

Saving, however, to unknown owners and non-residents twelve months after actual knowledge of such occupation, not exceeding three years ; and saving to persons under the disabilities of infancy, coverture, and unsoundness of mind, twelve months after such disability is removed, but not exceeding ten years : Tenn. 1572.

**§ 8756. Prescription.** No length of possession or occupancy of land belonging to a railroad corporation by an owner or occupier of adjoining land shall create a right to such land of the corporation in such adjoining owner or occupant, or in a person claiming under him : Mass. 112,215 ; Vt. 3301. As to lands within the roadway only : Vt.

No title to any real estate or interest therein shall be acquired by or against the proprietors of any railroad by any adverse possession, however exclusive or long continued : N.H. 157,15.

So, no right of way on or parallel to the railroad : Minn. 1891,21.

The railroad must be located within the time and substantially according to the description in its charter : Me. 51,15.

The location must be filed with the county commissioners, approved by them, and recorded : Me. 51,15.

Any subscriber to the stock may complain to the county commissioners that the railroad has not been located according to its charter before payment of his subscription, and, if they so determine, his subscription is void, and he recovers costs : Me. 51,15.

The right of the state shall not be bound by any of the provisions of this chapter, nor shall any person ever acquire by occupancy or adverse possession any right or title to any part of any road or grounds which belong to any town, city, or county, or which

have been donated or dedicated for public use by any such town, city, or county, or the owner thereof, or dedicated in any manner to public use; provided this act shall not apply to any alley laid out across any block or square in any city or town: Tex. 1887,41.

§ 8757. **Change of Location. (A) By the Stockholders.** If stockholders of the railroad corporation, holding one tenth of the capital stock thereof, are dissatisfied with the location, they may apply by petition to the railroad commissioners for a change of the same: N.H. 158,6.

**(B) By the Landowner.** Any occupant of land aggrieved by the proposed location may petition the superior court for an appointment as commissioners of three disinterested persons, one of whom must be a civil engineer to examine the route proposed and the alteration proposed, and determine accordingly; but no alteration of the route shall be made without the concurrence of the commissioner who is a civil engineer, nor (in New York) one which will cause greater damage to lands or materially greater length of road than the original route designated, nor one which shall change the general lines adopted: N.Y. 1890,565,6; N.C. 1952.

And there is an appeal from such commissioners to the supreme court: N.Y.

Any owner of land over which such railroad is located, who is aggrieved by such location, may, at any time before his damages are assessed, present his petition to the railroad commissioners, praying for a change of the location of such railroad: N.H. 158,7.

The location of any railroad already built may be changed, on petition of the proprietors, by the railroad commissioners, after notice to all persons interested, a hearing, and an award of damages to persons injured by such change: N.H. 158,23.

**(C) By the Directors.** Every railroad company after its line has been located may so far alter it as to change its curves, straighten its lines, and improve the location generally: Ct. 3461; N.Y.; N.J. Suppl. R.Rs. 49; O. 3277; Ind. 3903; Mich. 3322; Md. 23,168; Cal.; Ore. 3241; when such changes are approved by the railroad commissioners: Ct.

Filing a new map, etc.: Mich.

But not to depart from its general route prescribed in the articles: O., Ind., Md., Ore.

Any railroad company is hereby authorized to change portions of the line of its track for the purpose of improving the grades or curves; (1) provided that in no case such alteration or change shall vary the track of such railroad to exceed one mile, laterally, from its present location at any point: N.J. Suppl. R.Rs. 51.

(2) "Not departing from its general route:" Neb. 1,16,82; Ore. 3241; Wash. 2457; Mon. G. L. 690; Oka. 1059.

(3) Whenever the line would be improved thereby: Mass. 1887,430; Md. 23, 168; Oka.

(4) So as to pass through a county seat: Ill. 1891, p. 183.

And condemn land therefor, as above in this article provided: Mass., N.J., Ind., Neb., Md., Wash., Ida., Ore., Mon., Oka.

There must be a petition, notice to persons interested, and approval by the railroad commissioners: Mass.

At any time after the location the directors may alter the line, and file a new map, and take or condemn land therefor; (1) but not so as to take any route which would not have been authorized by the charter: Ind. 3913; Ida. 2668.

(2) Not without the approval of the commissioners: Mich. 1883,171.

(3) Provided such modifications shall vary not more than five miles from the line first located: Ark. 5443, 5447.

And nothing herein contained shall authorize a location within a city without the consent of the common council: Ind. 3913.

(4) A company may not change its route so as to avoid any point named in its articles: Ind. 3913; Nev. 852; Cal. 5467; Ida. 2668.

**Process.** The directors may, by two-thirds vote (a majority vote, Ind., Cal., Nev., Ida., N.M.), (1) change the route or its termini, or locate it in an adjoining county, upon filing in the clerk's office of the proper county a survey of such change: N.Y. 1890,565,13.

(2) Alter the route, or any extension or branch thereof: Wis. 1832; Minn. 2527; Kan. 23,50; N.C. 1953; Mo. 2559; Dak. 1879,46,12; Ga. 1689(m); Oka. 1040.

(3) Change the line in whole or part: Ind. 3903; W.Va.; Cal. 5465; Nev. 851; Ida. 2666; Fla. 39,21; N.M. 2665(17).

(4) With two-thirds vote of the stockholders: W.Va. 51,50.

And, by like vote, change the gauge, the capital stock being sufficient as by law required: Mo.

But not so as to change the general route: Ind., Kan., Mo., Cal., Ida., N.M.; or to avoid any point named in the articles: Ida., Mo.; or either of the termini: Mo., Kan.

So, neither terminus can be changed, except to a county adjoining the original one planned: N.Y.

The alteration of the route or terminus in any town or county which has issued bonds or taken stock in aid of such railroad cannot be made (1) without the written consent of a majority of the tax-payers: N.Y.

(2) Of two thirds of the legal voters: Minn.

(3) In any case: Wis. 1832; Dak.; Oka.

**Restrictions.** No such alteration shall be made in any city or village after the road has been constructed, excepting (1) upon two-thirds vote of the municipal authorities: N.Y.; Wis. 1832; Minn.; N.C.; Dak.; Oka.

(2) Upon simple vote: Fla.

**Special Provisions.** A railroad corporation, having taken land for its road, may vary the direction of the road in the city or town where such land is situated, but it shall not locate any part thereof without the limits of the route fixed under [§ 8148] unless with the consent in writing of the mayor and aldermen or selectmen, or board of commissioners as the case may be: Mass. 112,90.

The corporation shall, before the expiration of the time required for completing the road, file with the county commissioners the location of the different parts where such variations are made; and the time for completing the road shall not be extended in consequence of such variations: Mass. 112,90.

In the final location of a railroad a necessary or reasonable change of line may be made, although thereby the towns are changed through which the line passes, if the general route and the terminal points be observed; but not if such change would violate the conditions of the vote of a town, or of some subscription to render aid in the construction, unless the assent of such town or party is first obtained: Vt. 3310.

The original description on the preliminary survey need not thereby be changed, nor shall the articles of association be invalidated; but the route as changed shall be filed with the secretary of state as an amendment of the original articles: Vt. 3311.

The railroad after taking land may vary the direction of its road, but not without the limits prescribed by its act of incorporation, and file such variations with the town clerk: Vt. 3373.

When the directors discover that a part of their line ought to be located in an adjoining state, it may be so constructed by vote of two thirds of the directors, and the sections of said railroad within the state shall be deemed a connecting line, and the capital may be

reduced accordingly to correspond with the number of miles within the state : N.Y. 1890,565,14 ; N.C. 1984.

Any company may change the location of its road, or of any section or part thereof, either before or after such location has been approved by the commissioners, provided such change is made before the construction of said road or of said section or part thereof has been commenced, and is made with the written approbation of said commissioners ; provided, that all damages that may be occasioned to any person by the taking of any real estate for said purposes shall be paid for by said company as provided by law : Ct. 3460.

When a railroad has located its road to terminate at another railroad, which is subsequently located so as to afford communication with a city on another line, the first mentioned company may alter its line accordingly, with the consent of two thirds of the stockholders : N.Y. 1890,565,13.

Railroads may at any time straighten, widen, and otherwise improve their lines, and the bridges, sidings, and other structures thereon, and make new feeders, and for such purposes take and purchase land and material, making ample compensation or adequate security therefor before entering upon possession : Pa. R.Rs. 59 ; N.J. Suppl. R.Rs. 49.

It shall be lawful to relocate any part of said railroad which is not built : provided, however, that if such change shall be made in any part of the route located, it shall be incumbent upon the company making such change to first secure the consent of any stockholder or subscriber who holds stock, on the condition of such location, before such change of location shall be made ; and provided further, that no railroad constructed under this act shall change the location in any city except to comply with an ordinance of the common council of said city already passed ; and provided further, that no change of location shall be made where the right of any company to cross the land of any person or persons is the subject of litigation ; provided, that any such relocation shall be made within twelve months from the time of original location : N.J. R.Rs. 128.

City authorities may make contracts with railways for change of grade, relocation, etc. : N.J. R.Rs. 163 ; Pa. R.Rs. 65.

A railroad chartered to build a road between two given termini may elect to construct a portion thereof only, where by lines of other railroads constructed or being constructed a connection with the other terminus may be had ; and upon such election the franchise beyond said point becomes void ; provided that this shall not authorize the abandonment of any part of the railroad actually constructed : Pa. R.Rs. 68.

Said action must be taken at a general or special meeting of stockholders by vote of a majority of the stock, and the resolution filed with the secretary of state : Pa. R.Rs. 69.

Whenever any portion or portions of any railroad, which has been or may hereafter be constructed by any railroad company, under the authority of this commonwealth, shall be found to pass over or in proximity to any workable vein or veins of iron ore, coal, or other mineral, so as to interfere with the ordinary method of mining the same, or with the safety of said road, then, and in every such case, it shall be lawful for such railroad company to relocate the said road in such manner as they may deem best ; said relocation shall not exceed five hundred yards from their old location : Pa. R.Rs. 58.

A company may, by a resolution adopted by a majority of its board of directors, at a meeting thereof duly called for the purpose, with the written consent of three fourths in interest of its stockholders, change the line, or any part thereof, and either of the proposed termini, of its road ; but no change shall be made which will involve the abandonment of any part of the road, either partly or completely constructed ; and any subscription of stock made upon the faith of the location of such road, or a part thereof, upon any line abandoned by such change, shall be cancelled at the written request of the subscriber not having consented thereto, filed with the secretary or other chief officer of the company within six months after such change : O. 3272.

When any such change is made, the same shall be described in such resolution, a duly authenticated copy of which, under the seal of the company, shall be filed with the secretary of state, and by him recorded, with proper reference, on the record of the articles of incorporation of the company, and when so filed such change shall be considered as made, and shall be as valid and binding as if such changed line had been the line originally described in such articles: O. 3273; Wis. 1832.

When any such company has issued its mortgage bonds for the construction of its road, the record of the mortgage securing the same in each county through or into which the changed line of the road passes shall be as effectual to create a lien upon the changed line of road, and upon the property of the company, as if such mortgage contained a complete description of such changed line and of such property: O. 3274.

When the line has not been finally located, a company may change its line so as to pass through a county not named in the articles, or not to pass through a county so named or a town, by the president and directors making a certificate declaring such necessity and the cause thereof, and filing it with the secretary of state: O. 3275.

But nothing herein shall be construed to authorize the abandonment of any part of such company's line that has been finally located, or a change of the general route of the line of such road, or the terminal points named in the articles of incorporation: O. 3275.

Local alterations made to improve the line when it appears to the directors unnecessarily dangerous, inconvenient, or expensive to operate by reason of unavoidable causes, grades, or errors in location, may be made by the directors subject to the restrictions above: Ind. 3914.

Any change so made shall subject the company to the payment of all damages that are sustained by any parties thereby, to be recovered as in ordinary cases of condemnation: provided that if any part of its track be changed for a distance of more than one mile, it shall pay to the owners of land along the original location all damages that may thereby accrue, to be assessed in the same way: Ind. 3914.

The route so adopted, or any part thereof, may be changed by the company as often as found expedient before it has fully completed its road thereon: provided that any such change shall be approved by said board, and a new map showing the new route adopted shall be made, certified, approved, and filed as aforesaid: Mich. 3321.

A railroad desiring to relocate its line after it has been constructed must file petition in the superior court making all trustees, mortgagees, or other lien holders, all cities, towns, and counties, which aided by taxation to build the road, parties: and such location will not be decreed except upon payment to the proper parties of all money or property given in consideration of the road's original location, nor without the consent of all landholders, and any such cities, towns, or counties: Io. 1876,118.

A company may change its location from time to time as often as it chooses and condemn lands in the same way; but when such change is made, the land of the former location reverts to its original owner: Va. 1089; W.Va. 54,50.

And when any route or line is abandoned in the exercise of the power herein granted, full compensation shall be made by the company for all money, labor, bonds, or material contributed to the construction of the road-bed or its superstructure by those so interested by their contributions in the abandoned route or line: N.C. 1889,391,1.

Any railroad company incorporated under the general laws of this state may, by resolution of its board of directors, change either terminus of its line of railroad at any time before the final location of the same: Tenn. 1887,39,1.

Said resolution shall be filed and registered in the office of the secretary of state: Tenn. 1887,39.

The directors may abandon a location when impracticable and make such changes, not exceeding twenty miles laterally, as will tend to economy or promote business, filing a map of such changes with the secretary of state: Ark. 5444.

Any railroad having located its line, whether it be completed or not, may make a new location and acquire the right of way therefor by condemnation; provided that the previous right of way shall thereupon revert to the landowners on payment by them to the railroad company of the damages paid by said company for such previous right of way: Col. 2795.

**Powers.** For the purpose of making any such change, the company shall have all the rights, powers, and privileges to enter upon and appropriate lands, and make surveys necessary to effect such change, upon the same terms, and subject to the same obligations, rules, and regulations, as are prescribed by law: N.H. 158,27; N.Y.; Pa. R.Rs. 59,60; O. 3278; Neb.; N.C.; Md.: Ark. 5447(6); Cal. 5467; Dak.; Ida. 2668; N.M.; Oka.; Fla.

**Damages.** If the location is changed after payment of damages, and no land of the owner taken for the new location, the landowner has his option to convey the land so located to the railroad and retain his damages, or he may take the land back and pay back his damages, less the damages accrued to him in consequence of the location alone, and the land shall always revert in this manner when the damages have been awarded but not paid: Vt. 3375,3376.

Upon such change of location, the land first located reverts to the landowner, and the difference of damages either way is payable as the commissioners find: Vt. 3374.

When real estate has been taken and damages appraised, and the road is abandoned before being opened and worked, no exaction shall issue, but the owner may recover any actual damage he may have suffered in consequence of laying out the road, or for reason of any unreasonable delay in operating it: Ct. 3465.

If any alteration is made after grading begun, compensation must be made for injury to any lands that may have been donated to the company: N.Y., N.C., Fla.

When the line is thus diverted, the company is liable in damages to any person owning land in such county from which it is diverted; and persons who subscribed to the stock on the line of that part of the road so changed shall be released from their subscription. Actions for such damages must be brought within six months after the filing of such certificate and publication thereof: O. 3276.

When the location is changed after the road has been used (constructed, Md.) for transportation of persons and property, the company shall be liable for all damages occasioned by such change to the owner of the land upon which the road was first constructed: O. 3278; Md.; Oka.

**§ 8759. Opening for Traffic, and Abandonment.** No railroad or extension of a railroad shall be opened for public use until the board, after an examination, certifies (1) that all laws relating to its construction have been complied with: Mass. 112,141; S.C. 1512; (2) and that it appears to be in a safe condition for operation: Mass.; Me. 1885,292; Ct. 3421; S.C.

No railroad shall lay out and finally locate its road without the written approbation of the location by said commissioners: Ct. 3460.

The change of location shall be a discontinuance of the part abandoned, but the proprietors may be allowed by the commissioners a limited time to remove their fixtures therefrom: N.H. 158,24.

Nothing herein shall be construed to authorize the abandonment of any portion of the track of any railroad as described in its articles: N.Y. 1890,565,14.

It shall be lawful for it to sell or dispose of the section of road or location abandoned, in such manner as its directors may see fit: N.J. Suppl. R.Rs. 52; Cal. 5467.

Within five years it must be sold or relinquished: Cal., Ida.

Or it may be retained (the company paying local taxes thereon, N.J.): N.J. Suppl. R.Rs. 105; Pa. R.Rs. 62.

All such conveyances acquired by gift (§ 8702) to said companies shall be null and void unless said company completes said road on the right of way so conveyed within five years from the time of said conveyance : O. 3282.

Where, upon an unfinished road, a right of way, or any part thereof, remains for ten years unused for railway purposes, it shall be held forfeited, and shall revert to the owner of the land, unless at least twenty miles of the road have been completed by the company during that period : O. 3414.

It shall be unlawful for any railroad company, organized under any law of this state, and whose road has been constructed wholly or in part by public aid or local subscription given as a bonus for such construction, having once constructed and put in operation the whole or any portion of said road, and located and opened for business stations and houses thereon, to thereafter take up, abandon, or cease the operation of its said track, or any portion thereof, or to close up and abandon its said stations and station-houses, or to withdraw the agents therefrom, except upon the decree or order of the circuit court of the county or counties through which said road may run : Mich. 1891,125,1. See also § 8802.

Provided, that no order or decree granting the prayer of any such petition shall be made by any circuit court except upon condition that such railroad company first pay back to each individual, private or public corporation, or to the heirs, executors, administrators, successors, or assigns of such individual or corporation, all moneys received by such railroad company from such individual or corporation as a bonus, and interest thereon at the rate of six per cent per annum from and after the time such bonus was granted, not to exceed five years : and provided further, that such railroad company first deed back to the person, persons, or corporation from whom it was received, or to his or its heirs, assigns, executors, administrators, or successors, each and every tract, part, or parcel of land, or right of way, obtained from such person, persons, or corporation : Mich. 1891,125,1.

Where a railroad, constructed in whole or part, has ceased to be operated or used for five years, or construction abandoned for such time, or where any portion has not been operated for four years, the rails having been removed, it is deemed an abandonment, and any other corporation or person may enter : Io. 1260.

Provided, that if the road-bed or any part is not used for eight years, or construction has been abandoned for eight years, the land and the title thereto revert to the original owner : Io. 1260.

Railways which have abandoned the use of track for the space of five years lose their property thereto : Nev. 856.

So, ten years ; and other railways may condemn and use the location : Md. 1890,220.

In every such case of abandonment, any other corporation may enter upon such abandoned work, or any part thereof, and acquire the right of way over the same, and the right to any unfinished work or grading found thereon, and the title thereto, by proceeding in the manner provided, and conforming in all particulars as near as may be to the provisions of this chapter : but parties who have previously received compensation in any form for the right of way on the line of such abandoned railway, which has not been refunded by them, shall not be permitted to recover the second time, but the value of such road-bed and right of way, excluding the work done thereon, when taken for a new company, shall be assessed to the former company or its legal representative : Io. 1261.

In Texas, special provision is made for the abandonment of a terminus on the coast, being a county site which has been destroyed by a cyclone when the county site has been removed : Tex. 1887,8.



**Art. 877. Public Rights, State Control, Land Grants.**

§ 8770. **General Rights.** For the right of the state to regulate freights and fares, see §§ 8801, 8833.

The rights of the state as to the corporation, its franchises or property, shall not be impaired by any contract of lease or union made by it: N.H. 156,45.

Railroads, being designed for the public accommodation like other highways, are public, and at all times subject to the control of the legislature: N.H. 157,1.

All railroad corporations are public, and trustees and others in whom any railroad is vested are public agents so far as the security and protection of the public rights and interests are concerned: N.H. 157,3.

The general assembly shall have power to enact, from time to time, laws to prevent and correct abuses, and to prevent unjust discriminations and extortions in the rates of freight and passenger tariff, and to establish reasonable maximum rates of charges for the transportation of persons or property on any railway that may be constructed under the provisions of this act, and to enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of the property and franchises of any such corporation: Ill. 114,25. See § 8833.

No law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter: Va. 1240.

§ 8771. **Lien.** The state has a lien upon all railroads, their appurtenances and stock therein, for all penalties, taxes, and dues, which has precedence of all claims on judgments: Ind. 3919; Mich. 3362 amt.

The citizens of the state have a lien upon all personal property of railroads to the amount of one hundred dollars for debts originally contracted within the state, which takes precedence next after the lien of this state, above: Ind. 3919; Mich.

§ 8772. **Limit upon Earnings.** In every year when its net receipts exceed the average of ten per cent on its expenditures from the commencement of its operations, the excess shall be paid into the treasury of the state, until otherwise directed by the legislature: N.H. 157,19.

§ 8773. **Purchase by State.** The commonwealth may at any time during the continuance of the charter of a railroad corporation, after the expiration of twenty years from the opening of its road for use, purchase of the corporation its road and all its franchise, property, rights, and privileges, by paying therefor such sum as will reimburse to it the amount of capital paid in, with a net profit thereon of ten per cent a year from the time of the payment thereof by the stockholders to the time of the purchase: Mass. 112,7; Vt. 3302.

The commonwealth may at any time take and possess the road, franchise, and other property of a railroad corporation, after giving to it one year's notice in writing; and shall pay therefor such compensation as may be awarded by three commissioners, to be appointed by the supreme judicial court, who shall be sworn to appraise the same justly and fairly, and shall estimate and determine all damages sustained by it by such taking; and a corporation aggrieved by the determination of said commissioners may have its damages assessed by a jury of the superior court in the county of Suffolk, in the same manner as is provided by law with respect to damages sustained by reason of the laying out of ways in the city of Boston: Mass. 112,8.

Any railroad or canal corporation having or claiming to have any contract with the state by virtue of its charter or any supplement thereto, or any law of this state, whereby its property, or any part thereof, is claimed to be exempted from the taxation

imposed by any law of this state, it shall be lawful for such corporation, upon the written assent thereto of the governor, to execute and file in the office of the secretary of state an instrument, to be first approved by the attorney-general, waiving the benefit of and surrendering any such contract and agreeing to submit itself and be subject to the operation of the provisions of all constitutional general laws of the state, applicable to all the railroad and canal corporations of this state which can be taxed by the legislative power of the state by acts passed or to be passed; and upon the execution and filing of such instrument so approved as aforesaid, any contract or provision contained in the charter of such corporation or supplement thereto, or any statute of the state, by which the state has or claims a right to take or purchase the property of such corporation or any part thereof, shall be and the same is hereby wholly extinguished and surrendered: N.J. 1890,116.

§ 8774. **Land Grants.** Railroads may sell state lands granted to them, or any portion thereof, to any other railroad which may by law have the right to build upon the line or any portion of the line upon which said lands are applicable, upon such terms as it shall fix; provided that the corporation receiving said land shall be bound to construct such line and comply with all conditions of the original act of the state granting such lines to the first corporation; and two thirds of the stockholders of the corporation making said transfer must assent to the same: Wis. 1858.

Any railroad corporation upon which any lands shall have been conferred to aid in the construction of any railroad, or to which any such lands shall have been sold, assigned, or transferred, may, to raise money to construct such road, mortgage or convey by any mortgage or deed of trust, in addition to such property as is hereinbefore provided for, any and all such lands so conferred upon it, and thereby pledge the entire avails of such lands, when acquired by such corporation and sold: provided, that no bonds or other evidences of debt so secured shall be made payable at a longer time than twenty years from the date thereof, and that all such lands remaining unsold at the expiration of such twenty years shall thenceforward remain subject to purchase by actual settlers, at a price not exceeding six dollars per acre: and that this section shall not be taken to exempt any lands from any taxation whatever: Wis. 1859.

In Texas every railroad is entitled to a state land grant of sixteen sections per mile of road completed as often as the road is completed in sections of ten miles; but companies constructed on the "prismoidal" plan are entitled to only eight sections: Tex. 4267-4269.

But this would seem to be now repealed: Tex. 4267a.

No part of the land embraced within the territory of Oklahoma shall enure to the use or benefit of any railroad corporation, except the rights of way and land for stations heretofore granted to certain railroad corporations. Nor shall any provision of this act, or any act of any officer of the United States done or performed under the provisions of this act or otherwise, invest any corporation owning or operating any railroad in the Indian Territory, or territory created by this act, with any land or right to any land, in either of said territories, and this act shall not apply to or affect any land which, upon any condition on becoming a part of the public domain, would enure to the benefit of, or become the property of, any railroad corporation: U.S. 1890,182,18.

## CHAPTER IV. — TRANSPORTATION AND OPERATION.

**Art. 880. Railways and Stations.**

§ 8800. **Application.** All the duties and liabilities imposed by this chapter shall apply to all lessees or other persons owning or operating such railway : Io. 1278. Compare § 8500.

§ 8801. **Are Highways.** Railroads heretofore or hereafter constructed in this State, are hereby declared public highways : W.Va. 54,71 ; Ala. 1158 ; Miss. 1884, 23,1. See also §§ 8830, 8840.

And shall be free to all persons for the transportation of their persons and property thereon, (1) under such regulations as now are or may be prescribed by law, but nothing in this section contained shall be construed to exempt any person from the payment of the lawful charges for such transportation : W.Va.

(2) On payment of just compensation : Ala., Miss.

§ 8802. **Duty to Operate.** The proprietors of every railroad shall in all things conform to the requirements of the laws, shall not discontinue their road nor any part of it, shall keep it all in good repair, and discharge their duties in carrying passengers and freight agreeably to the proper object and purpose of such railroad : N.H. 157,9.

It shall be the duty of the proprietors of every railroad to provide suitable crossings, stations, and other facilities for the accommodation of the public : N.H. 159,1.

No railroad having established its business upon a line shall substantially deviate from the track as originally built and used, without the consent of the legislature : Me. 51,46.

No railroad having established its business as aforesaid shall cease to run its trains and operate its road so long as said railroad company pays dividends to its stockholders from its earnings ; but this section does not permit any railroad company to cease operating its road or running its trains : Me. 51,46.

And if any railroad ceases for sixty days to run regular trains, a receiver may be appointed ; see § 8900, etc. : Me. 51,47.

Railroads used partly for transporting lumber and ore during the summer, or for summer travel, may cease operation during the winter with permission of the railroad commissioners for a term not exceeding seven months : N.Y. 1890,565,55.

Any railroad company or corporation owning or operating any railroad, wholly or partly within this state, and which has received aid from private individuals along its line of road in the construction of the same, shall maintain and run at least one passenger train each way over that portion of its road within this state every week day, unless prevented by accident or the elements, which train shall not be used for the transportation of freight, and such railroad company shall furnish sufficient accommodation with such train for the transportation of all such passengers as shall within a reasonable time previous thereto be ready at the several stations on its railroad, at the junctions of other railroads, and at such stopping places as may be established for receiving and discharging way passengers, and shall take, receive, transport, and discharge such passengers at, from, and to such stations, junctions, and places, upon payment, or tender of payment, of the fare legally authorized therefor, if such payment shall be demanded : Mich. 3357b.

From and after the completion of any railroad, or the completion of any portion thereof capable of being operated, it shall be the duty of the corporation, or individual owning the same, to operate it ; and upon the failure of said corporation or individual

so owning said road to keep the same, or any part thereof, in full operation for the period of six months, its or his right to operate the same in whole or in part, as the case may be, shall be forfeited; and the lands occupied for the purposes of its or his road, so far as the same shall not be operated, shall revert to the original owners, or their successors in interest. A railroad shall be deemed to be in full operation when one passenger train, or one mixed train, is run over it once each day in each direction, and a sufficient number of freight trains to accommodate the traffic on said road: Cal. 1880,43,1.

This act shall not be construed to apply to a case where the operation of the road is prevented by the act of God, nor to a case where the operation of said road, together with its branch or trunk lines, does not yield income sufficient to defray the expenses of maintaining and operating the same: Cal. 1880,43.

The railroad commissioners of the state of California shall have the power to examine and determine the question: Cal. 1880,43.

And when a branch line shall be constructed as herein provided, they shall run trains thereon making close connections with trains on the main line: N.M. 2736.

§ 8803. **Stations: Abandonment.** A railroad corporation which has established and maintained throughout the year for five consecutive years a passenger station at a point upon its road shall not abandon such station, nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same road: Mass. 112,156; Vt. 3423.

So, if for one year: R.I. 158,19; Ct. 3516.

Except by consent (1) of the supreme court, upon petition and hearing: Vt. (2) Of the legislature: R.I. (3) Of the commissioners: Ct.

And it may be abandoned after thirty to sixty days' publication of intention, if no one object: Vt. 3424.

No depot once established can be abolished or disused, nor trains cease to stop regularly thereat, without consent of the commission: Miss. 1890,88.

When there is a station upon the line which it is proposed to abandon, in making such change of location the directors may get an order of the railroad commissioners, after notice and hearing, if a new station has been provided at some convenient point upon the new line: Ct. 1889,90.

Any person aggrieved by any order of the commissioners concerning stations has an appeal to the superior court: Ct. 3518.

It shall be unlawful for any railroad company organized under any law of this state, and whose road has been constructed wholly or in part by public aid or local subscription given as a bonus for such construction, having once constructed and put in operation the whole or any portion of said road, and located and opened for business stations and houses thereon, to thereafter take up, abandon, or cease the operations of its said track, or any portion thereof, or to close up and abandon its said stations and station-houses, or to withdraw the agents therefrom, except upon the order or decree of the circuit court of the county: Mich. 3457a.

**Establishment.** Railways are required to maintain stations and freight depots at all towns and villages (1) on the line having a population of five hundred or more: Ill. 114,48. So, three hundred: Tenn. 1887,225.

(2) Within one eighth of a mile of the line, and having two hundred population and a post-office: Wis. 1801. So, within one third of a mile and more than a mile and a half from the nearest station: Ct. 3513.

(3) Within half a mile, and having three hundred population: W.Va. 54,50.

Upon order of the commissioners, upon petition of twenty inhabitants: Ct.

Railways may be required to erect stations at towns near the state line, and stop

trains thirty minutes at some place at least three hundred feet from the state line : Ark. 1887,76.

They must establish "loading points" along their line, as may, after hearing, be ordered by the commissioner: Col. 1885, p. 309,6. See below.

Railroad corporations shall establish and maintain depots or station-houses, with suitable accommodations, at such points on their roads (1) as the supreme court for the county where the same are situated shall, on petition, require, signed by ten freeholders in the town : Vt. 3422 ; 1884,49.

(2) As "shall be reasonably necessary and convenient : " Miss. 1890,88.

(3) As the commissioners order, upon petition of twenty electors (of new railways) : Ct. 3514.

Each company shall cause three each way of its trains of cars for passengers, if so many, to stop at a town or village containing over three thousand inhabitants for a time sufficient to receive and let off passengers : O. 3320.

The board of railroad commissioners, upon petition of the selectmen or of twenty or more legal voters of a town, after notice and hearing, may order the proprietors of a railroad to establish such stopping places or depots in the town as they find that the public good requires, within a time by them limited, and to stop trains at such stopping places or depots : N.H. 159,21.

When any village of one hundred and fifty inhabitants, having a post-office, is two miles or more from the nearest station, and not more than one half-mile from the railroad, files a petition signed by twenty freeholders resident therein, the commissioners may inquire and make order concerning railroad facilities, sidings, and other track accommodations : Mich. 3307.

Where stations are ten (fifteen in North Dakota) miles or more apart, the common carrier, when required to do so by the railroad and warehouse commissioners, shall construct and maintain a side track for the use of shippers between such stations : Minn. 509(e) ; N.D. 1890,122,3.

All railroad companies shall, on a petition signed by a majority of the legal voters, call any station located in any city or village the same as the corporate name of said city or village : Neb. 1891,18.

Every railroad shall receive and deliver all grain and other freight consigned to its care for transportation at the crossings and junctions of all other railroads, canals, and navigable rivers ; and shall, at all cities and towns along the line of their railroad, having a population of two hundred inhabitants or more, construct and maintain switches and freight-houses for the receipt and delivery of grain and other freight that may be tendered such railroad corporation for transportation ; and shall stop at least one train daily thereat to receive and unload freight : Mo. 2622.

When not less than fifty citizens of any incorporated town in this state, situated on the line of any railroad, shall make application in writing, it shall be the duty of such railroad company to stop all trains, freight or passenger, at some point within the corporate limits of such town most convenient, and it shall furnish, provide, and maintain for such town and the business thereof every facility and convenience furnished or provided for other towns of the same or approximating the same population situated on the line of said railroad ; and there shall be no unjust discrimination on the part of such companies, either in respect to such facilities and conveniences, or in respect to the freight and passenger charges of tariff upon said railroads, but the same shall be equal and uniform, and as to such towns the same or any description of way passengers and freight shall not be subjected to higher rates of charges than the lowest rates charged by the same line at the same time for the same service over any part of said line : Ark. 5500.

No railroad hereafter constructed in this state shall pass within a distance of three miles of any county seat (or town having two thousand inhabitants, N.M.) without

(1) passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills, or mountains; provided such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes: Tex. 4223. (2) Building its main line, or a branch, to within one fourth mile of its limit: N.M. 2736.

Any point at which the roads of two companies intersect or connect is declared to be a depot for the receipt and delivery of freight and passengers: Tex. 4238.

And they must join in maintaining a depot, properly warmed, etc.: Mo. 2582; Tex. 1889, p. 19.

"Whenever a petition signed by at least one hundred citizens and tax-payers, being within ten miles of any fixed point on the line of any railroad, shall be presented to any known officer or agent of such railroad, asking that sufficient accommodations at the point named in such petition for receiving and delivering of passengers and freights as the public necessity may demand [*sic*]; and provided, that all trains shall be required to stop and take on or put off all freight and passengers for that point or station: provided, that this section shall not require such stopping place to be within a shorter distance than ten miles of any other fixed station or depot on such line:" N.M. 2737.

**The railroad commissioners**, upon petition, may order the erection of a station on the line of any railroad when public convenience and necessity require it: Me. 51,122.

So, upon application and hearing, they may designate "loading points" for freight cars: Col. 1885, p. 309,6.

They have general supervision of the erection, location, and arrangement of depots: Miss. 1888,26,2; 1884,23,18.

They may provide for union depots, and fix the proportion to be paid by each railway: Miss.

**Buildings.** They may designate the site and kind of building: Me. 51,123; Miss. 1888,26,2.

Waiting-rooms, etc. must be provided: Ind. 1891,56; Minn. 2600; Tenn.; S.C. 1494; Ala. 1154; 1887,37; Miss. 1884,23,18.

Duly opened and warmed when trains are due: Minn. 1891,105; Tex. 1891,27; Ala.; Miss.

All railroads terminating in Iowa shall establish and maintain at such terminus general freight and passenger offices (and express and telegraph offices when operating an independent express or telegraph company) at localities accessible and convenient to the public, and there keep for sale tickets over their respective roads, and in advertising correctly set forth their true connections, starting or terminal points, time tables, and freight tariffs, affording correct information to the business and travelling public: Io. 1876,68,1.

All railroad and sleeping-car companies, running or operating sleepers or sleeping cars within this state, upon railroads terminating therein, shall establish, maintain, and keep open to the public at such termini ticket offices at accessible and convenient places, in which they shall keep a diagram of the berths and state-rooms in such sleepers or sleeping cars, and shall at all times during the daytime keep such offices open for the sale of tickets for such berths and state-rooms: Io. 1880,169,1.

Railroads are required to erect freight depots at stations sufficient to protect produce and all merchandise from damage by exposure to the weather or otherwise: Tex. 4236.

It shall be the duty of each and every railway subject to this act to provide and maintain adequate, comfortable, and clean depots and depot buildings at its several stations for the accommodation of passengers, and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the travelling public; and all such roads shall keep and maintain adequate and suitable freight depots and

buildings for the receiving, handling, storing, and delivering of all freights handled by such roads : provided, that this shall not be construed as repealing any existing laws on the subject : Tex. 1891,51,3(1).

May erect any enclosure around any depot where the public safety requires it, to prevent persons other than travellers from coming near the locomotive and cars, and may exclude from within such enclosures all persons except travellers : Miss. 1052.

**Offices Open.** All railroad companies shall keep their ticket offices open for the sale of tickets at least twenty or thirty minutes immediately preceding the departure of all passenger trains : Mich. 3326,3417; Tex. 4258b,9.

Railroad companies shall, at all junctions with other railroads, and at all depots where said railroad companies stop their trains regularly to receive and discharge passengers in cities and villages, for at least one half-hour before the arrival and one half-hour after the arrival of any passenger train, cause their respective depots to be open for the reception of passengers, said depots to be kept well lighted and warmed for the space of time aforesaid : Ill. 114,84.

All ticket offices must be open, and tickets on sale, and the cars open for admission of passengers, at least one hour before the advertised time of departure of passenger trains : Ind. ; Va. 1224 ; Tenn. 2359.

**Stops.** Trains are required to stop at stations advertised as a place for receiving and discharging passengers from such trains a sufficient length of time to receive and let them off with safety : Ill. 114,88 ; S.C. 1486.

So, at county seats : Minn. 1891,69. Or the telegraph station nearest to them : Ala. 1887,56.

One half-minute : Md. 23,179 ; Ala. 1157.

And at any station to permit a physician to alight who has been summoned to a patient : Fla. 1891,4070.

Railroads shall "stop such of their trains at any depot as the business and public convenience shall require : " Miss. 1890,88.

When any railroad company in this state shall refuse to stop any of its passenger trains at any station, ten freeholders of the town in which such station is situated may make their application in writing to the superior court, and if said court is not in session to any judge thereof, praying that said company may be ordered to stop the train or trains mentioned in said application at said station, to which application a citation shall be annexed, and the same shall be served upon such company at least six days before the return day named therein : Ct. 3519.

Said court, or judge, as the case may be, shall appoint a committee of three disinterested persons, who, being first duly sworn, shall hear and decide upon said application : Ct. 3520.

And shall stop at least one train each day each way at such station, if trains are run on such road to that extent : Wis. 1801.

But stations may be established to be used only during certain months of the year or for certain trains, of which notice is posted : R.I.

Special provision is made for union depot corporations : Me. 1887,120 ; Ind. 3964a-s ; Ill. 114,56-61 ; 1875, Apr. 7 ; Mich. 3458-3494 ; 3490 amt. ; 1891,39 & 94 ; Io. 1884,139 ; Neb. 1887,20 ; Tenn. 1885,5 ; Mo. 2667-8 ; Miss. 1888,26,2.

When two or more companies have, in the same street, alley, public way, or opening, two or more tracks of the same gauge, through a city or village, the council of such city or village may require such companies to use such tracks in common, and to pass their locomotives and cars over each track in one direction only : O. 3339.

Provision is made for two or more railroad companies running to the same town or city to construct and maintain a common or union railroad on one or more tracks connecting the railroads of such companies ; the presidents of such companies to form *ex officio* a union board of directors. Such companies shall be jointly liable for contracts

and damages to the public, and as between themselves liable in proportion of their interests. Other companies may thereafter enter and take an interest upon such terms as may be agreed upon: Ind. 3954-3960, 3964-3964s.

When one or more railroads use a common track in any city or village, they may enter into agreements for a common or joint station, duly approved by the boards of directors: Mich. 3353. See also §§ 8745, 8776.

§ 8804. **Mails.** Every railroad corporation shall, when requested by the postmaster-general or an authorized agent of the post-office department, carry the mails at such times and upon such trains as may be desired by him upon the terms provided in the following: Mass. 112,184; Vt. 3428; N.Y. 1890,565,56; N.J. R.Rs. 112; Ind. 3920; Mich. 3389; Va. 1204; Tex. 4235.

And must enter therefor into a contract with the United States for a compensation not exceeding that provided in the act U. S. March 3, 1845: N.Y. 1846,25.

The terms may be agreed upon by the postmaster-general and the company, or if they cannot agree, (1) the supreme court appoints three commissioners to decide: Mass. 112,185. (2) So, the governor appoints them: Vt. 3428; N.J.; Ind.; Tex. (3) The railway commissioners decide: N.Y. (4) The governor, attorney-general, and proxy of the board of public works in such company shall fix them, after hearing: Va. 1204.

Such price shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And (except in Michigan) if the postmaster-general requires the mail to be carried at other hours, or a higher speed, than the time or speed of the passenger trains, the corporation shall furnish an extra train for the mail, and have extra compensation, to be fixed as aforesaid: Vt. 3428; N.Y., N.J., Ind., Mich., Tex.

§ 8805. **Other Public Transportation.** Such proprietors shall, in time of war, insurrection, or invasion, transport soldiers, munitions of war, and other property of the state over such roads, when required by its officers and agents, at such rates as the governor and council shall impose, if the parties do not agree: N.H. 160,24.

They shall transport soldiers, munitions of war, and other property of the United States, and the mails of the United States, when required by the proper officers and agents, at such rates as the governor and council shall impose, if the parties do not agree, and the United States shall submit the matter to their decision: N.H. 160,25.

In time of war, invasion, or insurrection, troops, or persons in the military or naval service of this state or the United States, with their arms and baggage, shall be promptly transported in preference to other persons, for tolls not exceeding one half the usual rate, or one fourth, when such persons pass on another "work of internal improvement" in time of peace: Va. 1229.

Railroads are required to furnish transportation for state troops and equipments upon application of the officer in actual command, and receive compensation therefor fixed by contract with the adjutant-general: Va. 305.

## **Art. 881. Of the Tracks and Way.**

§ 8810. **Rails and Gauge.** A railroad may construct its gauge of any width except as below), or change it at any time: Pa. R.Rs. 53; Miss. 1064; Ky. 90a, IX.; Tenn. 1885,20.

By two-thirds vote of all the stock: Miss.

By a majority vote: Kan. 23,209.

By simple vote of directors: Mo. 2559.



Every company shall make every railroad constructed or controlled by it of one uniform gauge or width of track from end to end: O. 3338.

Narrow gauge is declared to be three feet: Minn. 2567.

Connecting railroads may adopt a uniform gauge, or if of different gauge an additional rail may be laid so as to admit of the passage of the same cars over both roads: O. 3338.

No company formed under this act shall lay down or use in the construction of its road any iron rail of less weight than fifty-six pounds to the lineal yard on grades of one hundred and ten feet to the mile or under, and not less than seventy pounds to the lineal yard on grades of over one hundred and ten feet to the mile, except for turn-outs, sidings, and switches: N.Y. 1890,565,31.

Every railroad shall be of the width and its works constructed in the manner prescribed by the act of incorporation. Bridges shall be made where necessary; and all the works of the company kept in good order: Va. 1187.

Milestones must be placed along the road, with the distance from the beginning or end of some well known point correctly and plainly marked: Va. 1188.

All railroads built by companies incorporated under the provisions of this act shall be constructed with the best quality of iron rail known as T rail or H rail, or other patterns of equal utility: Nev. 891; Cal. 5491; N.M. 2687.

**§ 8811. Switches and Couplings.** All switches hereafter laid in a railroad track used or intended to be used by passenger or mixed trains, including those so laid in renewal of existing switches, shall be of the kind known as the Tyler switch, or of some other kind of safety switch approved in writing by the board: Mass. 112,159.

Safety switches (the Tyler, Wharton, Lorenze, or some other similar kind, N.Y.) are required: N.Y. 1890,565,49; Me. 1887,76.

No railroad company shall run a passenger train over a switch at any junction or station unless a switchman be standing there with a signal: Ct. 3564.

Unless safeguards be provided as the commissioners require: Ct. 3565.

Railroad companies are required to so adjust, fill, block, and securely guard the frogs, switches, and guard-rails on their roads in all yards, and divisional and terminal stations, so as to thoroughly protect and prevent the feet of employees and other persons from being caught therein: Mass. 1886,120; Minn. 2594; Vt. 1888,22; Me. 1889,216; O. 8516,31; Mich. 3397 ant.; Wis. 1809a; Mo. 2627; 1891, p. 81.

**§ 8812. Bridges.** It is provided that railroads crossing navigable waters at or near the same point by draw-bridge shall, if practicable, use one and the same bridge: O. 3364.

All bridges must be examined by a competent engineer once a year: Mass. 1887, 334.

Footways may be required: Ct. 3503.

Bridges across canals or navigable waters must be built under the approval of the board of public works, and never less than ten feet in the clear above the water line: O. 3317,3518.

**Bridge-guards.** Every railroad corporation shall erect and maintain suitable bridge-guards at every bridge or other structure, any portion of which crosses the railroad (less than twenty feet above, Me.; eighteen feet, Ct., N.H.) above the track; such guards to be approved by the board: N.H. 159,26; Mass. 112,160; Me. 51,32; Ct.<sup>a</sup> 3501; N.Y. 1890,565,49.

All bridges must be (1) eighteen feet in the clear above the top of the rail: R.I. 158,14; Ct. 3500; Mich. 3401 amt.

(2) Seven feet above ordinary cars and three feet on each side: Vt. 3418.

They must "not obstruct free navigation:" Ind. 3961. See §§ 8705, 8746.

Guard-rails may be required on any bridge by order of the commissioners: Ct. 3427.

They must be placed on all bridges to protect the trusses in case of derailment: N.Y. 1890,565,49.

If a draw-bridge is not furnished with a gate closing automatically across the railroad, when the draw is open at a distance of five hundred feet from the draw, every passenger train must stop at least three hundred feet and not more than eight hundred feet from the drawbridge: Mass. 112,152,153.

Railroads terminating or to terminate at any point on any line of continuous railroad thoroughfare where there now is or shall be a railroad bridge for crossing of passengers and freight in cars over the same as part of such thoroughfare, shall make convenient connections of such railroads, by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that by reason of said railroads and bridge there shall be uninterrupted communication over such railroads and bridge as public thoroughfares. But by such connections no corporate rights shall be impaired [*sic*]: Ill. 114,45.

All trains must stop at not less than two hundred nor more than eight hundred feet from any drawbridge: Ct. 3560; Ill. 114,75; Wis. 1808 (six hundred feet); Ga. 1689(p), (four hundred feet).

Unless the commissioners order otherwise: Ct.

**Tunnels** may be required by the railroad commissioners to be lighted and ventilated: N.Y. 1891,360.

A railroad authorized to connect with and use any other railroad which uses any bridge or tunnel may be charged a sum equal to one half the interest at seven per cent upon the cost thereof, and one half of the cost and repairing and maintaining it; provided that, if such company has the larger amount of business over such bridge, roadway, or tunnel, the company owning it may require a proportionate division of such interest and expenses: Pa. R.Rs. 39.

NOTE. — *a* If required by the commissioners.

§ 8813. **Railway Crossings.** When two railroads cross each other at the same level, the engineman of every train on approaching such crossing shall stop his engine within fifty or five hundred or one thousand feet therefrom, and shall not resume his course until signalled to do so, etc., and he shall pass slowly over the crossing: N.H. 159,10; Me. 51,76; Mass. 112,161; Vt. 3405; R.I. 158,8; N.Y. 1890,565,36; O. 3333; Ill. 114,75; Mich. 3376 amt.; Wis. 1808; Io. 1884,163; Minn. 2570; Neb. 1889,41; W.Va. 54,61; Ky. 1890,409; Tenn. 1304; Tex. 4232; Mon. G. L. 700; Col. 2792; Uta 2350; S.C. 1482; Ga. 1689(p); 1883 p. 137; Ala. 1145; Miss. 1060; Fla. 39,28.

But trains need not stop upon two railroads crossing each other at grade, (1) when a system of interlocking or automatic signals renders it safe, and has (except in Col.) been approved by the state auditor (railroad commissioner, Mich., N.Y.): Mass. 1885,85; N.Y.; O. 3333; Ind. 3905a; Ill. 114,76a; 1891, p. 179. Mich. 3310,3376 amt.; Wis.; Minn.; Kan. 23,206; Col. 1891, p. 280.

(2) Or a semaphore with torpedo attachment is maintained: Neb.

(3) Upon order of the railroad commissioner at his discretion: R.I.

(4) When derailing switches, etc. or a flagman are maintained: Ky.

(5) If an employee be upon the crossing and signal the train to proceed (the railroads both belonging to the same company): N.H., Wis.

When two passenger or freight trains come on a crossing at the same time, the train on the road first built shall have precedence in crossing: O.; Mich. 3376; Neb. 1889,41,2; W.Va.; Ga. 1883, p. 137; Ala. 1145.

Provided that if one is on the main track and the other not, the train on the main track precedes, and so a passenger precedes a freight train: O., Mich., W.Va.

And regular trains on time precede trains of the same grade not on time, and engines with cars other engines: O., W.Va.

No electric, cable, or horse railroad can cross a steam railroad at grade except upon approval of commissioners: Ct. 1889,168.

When the intersecting roads are under the management of the same company, this section shall not apply to engines and trains run upon the longer road: Tenn. 1305.

Provided, that if any of the said crossings shall be made at grade, then the said railroad company shall at its own expense erect a proper signal station at such crossings, and keep a watchman thereat; and the trains of the company owning or operating the said road so crossed at grade shall have precedence over the trains of the company so crossing said track or tracks: Md. 23,197.

§ 8814. **Road Crossings.** Railroad commissioners have jurisdiction to require gates, electric signals, or flagmen at any railroad crossing: Mass. 1883,117; Vt. 1888,26; Ct. 34,24; O. 247a; Mich. 3301 amt., 3364-6; S.C. 1489.

So, the county commissioners: Ind. 1891,150; Md. 23,194; S.C. 1487-8.

The town authorities: Mass. 112,166; Me. 51,34; R.I. 158,39; N.Y. 1890,565,33; Ill. 114,99; Tenn. 1896.

The county court: N.Y.

Each company<sup>a</sup> shall erect, at all points where its road crosses a public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railroad, and warn persons to be on the lookout for the locomotive; and a company which neglects or refuses to comply with this provision shall be liable in damages for all injuries which occur to persons or property from such neglect or refusal: N.H. 159,4-5; Mass. 112,164; Me. 51,33; Vt. 1888,27; 3386; R.I. 158,67; Ct. 3478; N.Y. 1890,565,33; N.J. R.Rs. 7-8 & 118; O. 3323; Ill. 114,67; Mich. 3375; Wis. 1809; Io. 1288; Minn. 2569; Kan. 23,61; Md. 23,175; W.Va. 54,62; Tenn.<sup>a</sup> 1298,1895; Mo. 2609; Ark. 5479; Tex. 4231; Dak. Civ. C. 481; S.C. 1484; Ga. 708; Ala. 1146; Miss. 1050; Fla. 39,33; Ariz. 331; Oka. 1068. See § 8822.

And the whistle or bell must be sounded: N.H., Wis., Tenn., Ga., Ala., Oka.

Highway crossings must be properly maintained, with planks, sidewalks, etc., by the railway: Mass. 112,124; R.I. 1889,750; Ct. 3499; O. 1891, p. 261; Ill. 114,71; Mich. 3323; Minn. 2588; Kan. 23,105; Neb. 1887,73; Del. V. 13, 487,1; Tenn. 1889,119; Mo. 2609; N.D. 1890,127; Uta. 2359; S.C. 1534; Ga. 706; Ariz. 331.

Commissioners have power to prescribe form of signals at crossings and junctions, to be uniform on all railroads in the state: Mich. 3310.

Railroads are forbidden to obstruct highways (1) by stopping trains or leaving cars thereupon, except for the purpose of receiving passengers or necessary fuel and water; but in no case to exceed five or ten minutes for each train: N.H. 159,8; Mass. 112,169; N.Y. 1891,358; Pa. R.Rs. 123; Ill. 114,77; Mich. 3323, 3384 amt.

(2) "Wilfully or negligently:" Vt. 3391; 1882,39.

They shall so uncouple their cars as not to obstruct their travel for more than five minutes; Miss. 1049.

A special remedy is provided in case of continued obstruction: Mass. 1885,110; O. 2500a,b; Kan. 23,107.

The commissioners may interfere: Ct. 3498.

And no way shall be unreasonably and negligently obstructed by engines, tenders, or cars: Me. Or by switching: Ct. 3492,3493.

No engine or train shall be run through a town, or across a highway near the compact part of a town, at a speed greater than six (fifteen, Wis.; four, Fla.) miles an hour: Me. 51,75; Wis. 1809: 1891,467; Miss. 1047; Fla. 39,33.

The railroad commissioners have authority to regulate the speed at which engines and cars may cross highways, and concerning the obstruction of highways: N.H. 159,7; Ct. 3498.

Whenever the crossings by a railroad at grade of the streets of any village or city having a population less than fifty thousand shall be protected by gates, with persons to open and shut the same when an engine or train passes, the local authorities of the city or village shall not impose any limitation less than thirty miles an hour on the rate of speed at which such engine or train shall be run: N.Y. 1890,565,33.

If any railroad company shall have or erect alongside of its track or roadway, in any incorporated city where the same may adjoin any public road or street, a fence, wall, or embankment four feet high, sufficiently close and strong to prevent children and horses from going through the same, and shall construct and provide on each side of such track, where it may cross any public road or street, a gate of like height and sufficiency, and cause the same to be closed at least half a minute before any locomotive may cross such street or road, and to be kept closed until such locomotive and its train shall have passed by; or when the track or roadway, as aforesaid, shall be laid through any excavation four feet deep, then and from thenceforth it shall be lawful for such company to run locomotives and trains in said city over the parts of their roads so enclosed or excavated, and over the parts that do not join or cross any public street or highway, at any rate of speed they may deem proper: N.J. R.Rs. 11.

Cars are forbidden to run at a greater rate through towns and cities than is permitted by any ordinance thereof, under penalty of being liable for all damages done by such running, which shall be presumed to be caused by the neglect of said corporation; provided, that no such ordinance shall limit the rate of speed in passenger trains to less than ten miles an hour, or in other cases to less than six miles an hour: Ill. 114,87.

"When a railroad track is laid in a municipal corporation, the council may by ordinance regulate the speed of all locomotives and railroad cars within the corporate limits; provided, such ordinance shall not require a less rate of speed than four miles an hour, and in villages having a population of two thousand or less it shall not be fixed at a less rate than eight miles an hour:" O. 2500.

<sup>a</sup> The county authorities are to erect it: Tenn.

§ 8815. **Fences.** (A) If requested by the owner or occupant, the railroad must fence the land: Mass. 112,102.

So, in counties and towns where fencing is required: Io. 1289.

(B) So, where the railroad passes through enclosed or improved land, it must maintain fences: Me. 51,36; Ind. 4098a; Kan. 23,161; Neb. 1,72,1; Va. 1258; W.Va. 42,14; Mo. 2611; Dak. 1883,57; Ida. 2679; Uta. 2349; 1890,52; Oka. 1072.

(C) Each railroad corporation shall construct and maintain on the sides of its road, when completed and in running order, a good and sufficient fence: Vt.

3409; Ct.<sup>a</sup> 3504; N.Y. 1890,565,32; N.J. R.Rs. 120; O. 3324; Ill. 114,62; Mich. 3377 amt.; Wis. 1810; Io. 1888,30; Minn. 2572; Mo. 2611; Cal. 5485; Ore. 4045; Nev. 874; Ala.<sup>a</sup> 1134; N.M. 1889,75.

Special provision is made for fencing when the railway runs along by a highway: Minn. 2576.

The provisions requiring a railroad corporation to construct and maintain fences shall not apply to a case where the corporation has settled with and paid the landowner for building and maintaining such fence: Vt. 3411; N.Y.; O. 3329; Wis. 1814; Va. 1259; Cal. 5485; Nev. 874; Ida. 2679; N.M.

But it may be erected or repaired by the railroad, and the expense recovered from the owner: N.H. 159,25; Mass. 112,116; Vt.; Ct. 3507; N.Y.; O. 3330.

So, in such case, the owner of the cattle is liable to the railroad for damage or loss caused to it by means of the cattle straying on its line: Nev. 874; Cal.; Ida.

If there is a contract under which neither party is required to maintain a fence, and one is ordered by the commissioners, the cost is divided: Ct. 3509.

(D) In Kentucky, railroads are subject to the ordinary law of fencing, i. e. they are bound to build half the fence, the abutter building the other; and should they fail, the landowner may recover half the cost of the fence, plus twenty per cent damages: Ky. 1890,337.

Except that no railroad is required to build its half of a fence until the adjoining landowner has given it notice of his intention to build a sufficient fence along his half; whereupon the railroad must build its half within four months: Ky. p. 759,2-5.

The commissioners have power to inspect all fences, and make order concerning their construction and sufficiency: N.H. 159,19; Mich. 3308.

If the railroad refuse to build the fence, (1) the landowner may do so, and recover the value from the corporation, with interest (ten per cent, Mo.; not specified, Vt., Neb.) at one per cent a month, and the attorney's fee for costs: N.H. 159,24; Vt. 3410; O. 3325; Ind. 4098b; Ill. 114,65 & 66; Wis. 1812; Kan. 23,162-3; Neb. 1,72,1; Mo.; Dak. 1883,57; Oka. 1074.

(2) It is liable to a penalty to the landowner: Me. 51,37.

To the state: N.H.

So in the case of cattle-guards and fences only: N.H.; Wis. 1813.

All railroads through lands enclosed by exterior fences that shall not be fenced as required by section 3377 of this article, within the time therein required, shall not be operated through such enclosed lands (without the consent in writing of the owner or occupant thereof, Mich.): Mich. 3379; W.Va. 42,14.

**Private Ways and Guards.** A railroad corporation shall construct and maintain farm crossings of the road for the use of the proprietors of lands adjoining the railroad, and cattle-guards at all farm and road crossings: N.H. 159,1; Me.; Vt. 3407; Ct. 3504; N.Y. 1891,367; N.J. R.Rs. 102 & 120; Suppl. 19: 1887,167; O. 3327; Ill.; Mich.; Wis.; Io. 1888,30; 1268,1288; Minn. 2572,2585; Neb. 1,72,1; W.Va.; N.C. 1975; Tenn. 1896; Mo.; Miss. 1884,25.

When required by the landowner: Ala. 1887,111.

So, one "causeway" for each landowner: Pa. R.Rs. 51; O. 3327; Ind. 4098d; Io.; Neb. 1,16,106; Dak. Civ. C. 484; Oka. 1071.

But in other states the expense of cattle-guards must be borne by the landowner: Col. 1887, p. 370.

Every railroad is required to maintain cattle-guards: N.H. 159,23; Mass. 112, 115; O. 3324; 1891, p. 295; Mich.; Ind.; Wis. 1810; Io.; Kan. 23,101; Neb.; Va.; W.Va.; Tenn. 1889,248; Mo.; Tex. 4240-2; Uta.; S.C. 1536; Fla. 1891, 4069; N.M. 1889,75.

Except where relieved by order of the railroad commissioners: Mass. 1882,162.

When a railroad lawfully laid out through land without the consent of the owner separates one portion thereof from another, or from a highway or public way, and the owner has a right to cross the railroad, if a difference arises between him and the corporation either party may apply to the county commissioners, who may make such order as they may deem proper; but they shall not order the corporation to construct or maintain a crossing without its consent, except where it is liable by law or by agreement to construct a crossing for the owner of the land, or is the party making the application: Mass. 112,138.

The county commissioners may order the railroad to maintain such cattle-guards and farm crossings as they think reasonable; and the party interested may recover double damages in case of neglect: Me. 51,21.

Whenever any person owning land adjoining a railroad has been for five years since the first day of January, 1876, in the use of any private way or any farm way or road crossing said railroad, such use shall be *prima facie* evidence of title. No railroad company shall remove, obstruct, or otherwise interfere with any such crossing until the legal right so to do shall have been finally settled by a judgment or decree of the superior court in the county: Ct. 1889,148 & 252.

Owners of lands divided by a railroad location may construct and maintain wagon ways across such railroad, and enter on the way for the purpose of building culverts across the gutters, spiking planks to the ties, etc.: Ind. 3998a.

When such railroad is fenced on one or both sides at the point where such way is constructed, such owner shall erect and maintain substantial gates in the line of such fence or fences across such way, and keep the same securely locked, when not in use by himself or employees: Ind. 3998b.

If a railroad fail to construct cattle guards the landowner may appeal to the county court: Va. 1262.

Or construct them himself and recover costs: Tex. 4243; Mo. 2611.

The railroad is required to erect cattle-guards (1) at all fence crossings: S.C. 1536; (2) at all terminal points of its fence and at public crossings; but where there is a private pass-way across the road, the landowner must divide the expense of cattle guards and gates with the owner: Ky. p. 760,8.

NOTES. — <sup>a</sup>As and when required by the commissioners, or under such rules as the county commissioners prescribe.

§ 8816. **Liability for Cattle, etc.** (A) Until its fences and cattle-guards are duly made, the corporation and its agents shall be liable for the damages done by its agents or engines to cattle, horses, or other animals thereon (if occasioned by want of such fences and cattle-guards, Vt., O., Ind., Mich., Wis., Io., Uta.): Vt. 3412; N.Y. 1890,565,32; 1891,367; N.J. R.Rs. 120; O. 3324; Ind. 4025-31; Ill. 114, 62; Mich. 3377 amt.; Wis. 1810; Io. 1289; Minn. 2573; Kan. 23,94-98; Neb. 1,72,1; Va. 1261; Tenn.<sup>b</sup> 1889,248; Mo.<sup>a</sup> 2611; Tex. 4244-5; Cal. 5485; Ore. 4044; Col. 1885, p. 306; 1891, p. 285; Dak. 1883,57; Ida. 2679; Mon. 1891, p. 267; Uta. 1890,52; Ala. 1134; Fla.<sup>a</sup> 1891,4069; La. 1886,110; N.M. 1889,75 & 139; Ariz. 321; after such fences and guards are made, the corporation shall not be liable for such damages, unless negligently or wilfully done: Vt., N.Y., N.J., Ill., Mich., Wis., Neb., Va. 1260, Mo., Tex., Ala.

They are also liable for all damages sustained by any person in consequence of such failure or neglect: Minn. 2574; Ala.; Kan. 23,103; Oka. 1074.

So, if cattle are injured though not struck: Mo. 2612.

If actual damages for cattle killed or injured are not paid within thirty days the owner may sue and recover (1) *double* costs with the damages: Minn. 2575; Neb. 1,72,2.

(2) Damages, costs, and a reasonable attorney's fee : Kan. 23,95 ; Ark. 1885,52.

(3) Double value of the stock killed : Io. 1289 ; Mon. ; N.M. 1889,75.

(B) Every railroad (even when duly fenced, Fla.) shall be liable to pay the owner the full value of each, any, and every animal killed, and all damages to each and every animal wounded by the engine or cars on such railway, or in any other manner whatever in operating such railway, (1) irrespective of the fact as to whether such killing or wounding was caused by the negligence of such railroad company or not : Kan. 23,94 ; Ore. 4048 ; Mon. G. L. 713 ; Fla. 171,1 ; 1891,4069.

(2) So, the burden is on the railway to prove no negligence : Md. 23,198 ; Ky. 57,4-5 ; Tenn. 1301 ; Ala. 1887,98 ; Ga. 3042 ; Fla. 1889,3908 ; La. 1886,70.

(3) Unless the owner of the cattle was negligent or in fault : Io. 1289 ; Ore. ; Nev. 874 ; Col. 1885, p. 306 ; Ida. 2680 ; N.M. ; Ariz. ; Cal. 5485.

In some states there is a regular schedule enacted of the damages to be paid for all kinds of cattle killed : Col. 1885, p. 304 ; 1891, p. 282 ; Mon. G. L. 714.

If cattle are killed belonging to an owner who has not received compensation for fencing land along said road on the track adjoining such land, the loss is divided between the railroad and the cattle owner unless it arose from the wilful act or neglect of the company, in which case the whole loss is paid by it : Ky. 57,2.

Railways are required to keep a record of the marks or brands of stock so killed : Ore. 4046 ; Mon. G. L. 715 ; 1891, p. 268 ; Ga. 3037-8 ; Ala. 1887,38.

And must notify the owner : Ala. 1889,477.

The owner may, after the examination of two disinterested witnesses, kill injured cattle when valueless, without impairing his right to damages : Ga. 1883, p. 142.

The value is always assessed by appraisers : Ala., La.

The owner has a lien on the railroad for his damages : Fla. 1889,3909.

The provisions of this section shall not apply to any railroad company which shall enclose its entire line of road with a good and lawful fence, and good and sufficient cattle-gaps, and keep the same in repair : Io. ; Ky. 57,9 ; Kan. 23,98 ; and compare (A).

If animals are killed or injured on the track of such railroad by the cars or locomotives thereof, the company owning or operating such railroad shall not be liable to pay damages therefor if such animal entered upon the track of such railroad through such gates, unless it shall be proved that such killing or injury was caused by the negligence of the servants of the company owning or operating such railroad : Ind. 3998c.

The killing of stock on any railroad track shall be *prima facie* evidence that it was done by the trains, and the onus to prove the reverse will be on the railroad company : Ark. 5544.

So, if the road be not fenced : N.M.

The mere straying of live stock upon such unfenced portions of such railroads shall not be held, upon the trial of causes brought under this act, to be any evidence of contributory negligence on the part of the owner or owners of such live stock ; nor shall the grazing of the same unattended by a herder or herders be so considered : Ore. 4048 ; Ariz. 321.

Provided that contributory negligence on the part of the plaintiff in such action or suit may be set up as a defence : Ore., Mon. ; but provided further, that the allowing of stock to run at large upon common unfenced range or upon enclosed land owned or in possession of the owner of such stock shall not be deemed or held to be such contributory negligence : Ore. 4048.

§ 8817. **Drainage of Way, etc.** In no case shall any railroad company construct a road-bed without first constructing such necessary culverts or sluices as the natural lay of the land requires for the necessary drainage thereof: Ill. 114,20; Tex. 4171.

Railroads must construct suitable ditches and drains along each side of the road-bed: O. 3342; Mo. 2614; Ark. 1891,133.

## **Art. 882. Appliances for Transportation.**

§ 8820. **Brakes and Brakemen.** Every railroad corporation shall cause a good and sufficient brake to be attached to every car used upon its railroad for the transportation of passengers, and to every car used for the transportation of freight, except four-wheeled freight cars used only for that purpose: Mass. 112,170; S.C. 1499.

Railroad companies shall cause to be stationed on every passenger train trusty and skilful brakemen, equal in number at least to one for every two cars in the train: Mass. 112,170; Me. 51,61; Ct. 3566; Ill. 114,89; S.C.

So, at least one on the hindmost car of passenger and freight trains: Tex. 4234; S.C.

And one such brakeman upon the last car of every freight train: Mass. 112,170; Ill. 114,90; S.C.

Unless the brakes are efficiently operated by power applied from the locomotive: Ill. 114,89; S.C.

All railroad passenger trains except mixed trains shall be provided with brakes operated from the engine, by the engineer: Vt. 3429; Neb. 1891,19.

So, of all passenger cars: R.I. 158,12.

So all trains, after 1892: Io. 1890,18,4. After 1895: Neb.

Air brakes, or some equally effective device to be approved by the commissioners, are required on all passenger trains: Mich. 3363 amt.; N.Y. 1890,565,49.

And all engines, even of mixed trains, shall be provided with a driver and tender brake: Mich.; Io. 1890,18,3.

Railroads are required to maintain safety guards for brakemen where a bridge crosses a railroad at less than seven feet above the roof of freight cars: Mich. 3437. Compare § 8812.

§ 8821. **Appliances in Cars, etc.** Provision is made for railings or aprons between passenger cars: O. 3347.

For the testing under rules of the railroad commissioners of all locomotive boilers: Mass. 1882,73.

Automatic couplings are required to be placed upon new freight cars: Mass. 1884, 222; 1886,242; N.Y. 1890,565,49; Mich. 3439a; Io. 1890,18,1; Neb. 1891,19.

And of all passenger cars: N.Y.; Ill. 114,98.

And to be used on all cars by all railways: N.Y. 1889,521.

So after January 1, 1895: Io. 1890,18,2; Neb.

Axes, saws, and buckets are commonly required to be furnished each car: Mass. 112, 171; R.I. 158,16; N.Y.; Ill. 114,97; Mich. 3433; Wis. 1807.

"Such tools and appliances as the commissioner may direct:" S.C. 1500.

Stretchers: Ct. 3568.

One set, both inside and outside each car: Mass. 1882,54.

Water must be provided for passengers: Tenn. 2361.

No passenger car shall be lighted by naphtha or any oil which will ignite at less than three hundred degrees Fahrenheit: Mass. 112,172; Me. 1889,275; R.I. 158,16; O. 3353; Mich. 3381; Wis. 1806; S.C. 1501; Fla. 39,36.

Railroads are not allowed to carry upon any passenger train any kerosene, naphtha, or other inflammable oil or fluid, except such as may be necessary for lighting or lubricating the trains; provided that this shall not prohibit express companies from carrying such



articles in quantities not exceeding five gallons when properly packed and labelled : Mich. 3435.

Railroads are forbidden to heat passenger cars by stoves : N.H. 160,13 ; Mass. 1887,362 ; 1891,249 ; Me. 1889,275 ; R.I. 1890,834 ; N.Y. 1890,565,51 ; Md. 1890,387 (after 1891).

"All stoves shall be securely fastened to their places : " S.C.

So, all methods of heating (except steam from the engine, Vt.) must be specially approved by the railway commissioners : N.H. ; Vt. 1888,23 ; Me. 1889,275 ; Mass. ; R.I. 1890,834.

And they may make any orders concerning heating or lighting they deem necessary : Ct. 3569 ; Minn. 2603.

All passenger cars must be provided with such safeguards against fire as the railroad commissioners direct : Mass. 1882,54 ; Mich. 3434b,c,d.

Provision is made for heating passenger cars by an apparatus so constructed that the fire will be guarded when the cars are thrown from the track : O. 3351.

No door of any car used for transporting passengers upon any railroad shall be locked while such car is in use, or occupied by any passenger : Wis. 1806 ; W.Va. 144,18 ; Fla. 39,36.

Railroads are forbidden to use screens or bars across the windows of passenger cars : N.J. Suppl. R.Rs. 80.

§ 8822. **Bell and Whistle.** Every railroad corporation shall cause a bell (except in Kan.) of at least thirty or thirty-five pounds in weight, and a steam whistle, to be placed on each locomotive engine passing upon its road ; and such bell shall be rung or such whistle sounded (three blasts, Mass.) at the distance of at least three hundred yards or eighty rods from the place where the road crosses upon the same level any highway : N.H. 159,6 ; Mass. 112,163 ; 1890,523 ; Me. 51,33 ; Vt. 3387 ; R.I. 158,5 ; Ct. 3553-4 ; N.Y. 1891,358 ; N.J. R.Rs. 6 & 117 ; O. 3336 ; Ind. 4020 ; Ill. 114,68 ; Mich. 3375 amt. ; Wis. 1809 ; Io. 1884,104 ; Kan. 23,60 ; Neb. 1,16,104 ; W.Va. 54,61 ; Mo. 2608 ; Ark. 5478 ; Tex. 4232 ; Cal. 5486 ; Nev. 875 ; Dak. Civ. C. 483 ; Ida. 2683 ; Mon. G.L. 700 ; Uta. 2350 ; S.C. 1403 ; Ga. 710 ; Ala. 1144 ; Miss. 1048 ; N.M. 2668 ; Ariz. 322 ; Oka. 1070.

So, there must be a bell rope in cars : Tenn. 1306 ; N.J. Suppl. R.Rs. 4 ; R.Rs. 2.

But an automatic whistle signal, or other device, may be used instead : N.J. Suppl. R.Rs. 1 ; Ala. 1889,110.

§ 8823. **Arrangement of Trains.** In forming a passenger train, no baggage, freight, merchandise, or lumber car shall be placed in rear of the passenger cars : N.J. R.Rs. 116 ; Ind. 3927 ; Ill. 114,83 ; Mich. 3373 ; N.C. 1971 ; Mo. 2607 ; Ark. 5477 ; Tex. 4233 ; Uta. 2352 ; S.C. 1481 ; N.M. 2673.

And the engine must be at the head of the train : Mich.

In forming a passenger train of more than one passenger car, no loaded, and not more than two empty baggage, freight, merchandise, or lumber cars shall be placed in the rear of passenger cars : Vt. 3433.

No passenger car is allowed between the engine and cars loaded with dirt or stone : R.I. 158,10.

If they, or any of them, shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly : Ark. 5477 ; Ind., N.C.

**Detached Cars.** No car disconnected from a train shall be left on the main track unless accompanied by danger signals : Me. 51,62.

No cars that shall be or have been engaged in the transportation of petroleum or

crude oils, in bulk, shall pass any passenger train of any railway company in any tunnel, or upon any bridge of more than one hundred feet in length, in this state, nor shall they enter into nor upon such tunnel or bridge during the times a passenger train shall or may be within or upon such tunnel or bridge : N.J. R.Rs. 3.

§ 8824. **Running on Time.** If a conductor, engineer, or other person having the control of an engine or train of cars, runs such engine or train of cars or allows the same to be run upon a section of a railroad upon the time designated for any other engine or train of cars to run upon such section in an opposite direction, without notice from the conductor, engineer, or other person having control of the last mentioned engine or train of cars, authorizing him so to run, such conductor, engineer, or other person so offending, shall be fined not more than one thousand dollars, nor less than one hundred dollars, or imprisoned in the state prison not more than five years; and if the death of a person thereby ensues, the person so offending shall be guilty of manslaughter, and punished accordingly : Vt. 3436.

When a passenger train is behind time, a notice of such delay must be posted (1) at least thirty minutes before such train is due at any station : Va. 1225; Ky. 90a, VII.; S.D. 1890, 63; S.C. 1495; Ala. 1887, 37; Ga. 1884, p. 119.

(2) So, but no time for such posting is specified : Mo. 2584; Ala. 1154; Miss. 1848, 23, 18; La. 1890, 118.

Ten minutes before schedule time : O. 8516, 41. Fifteen : Uta. 1890, 32. Twenty minutes before : Ind. 1889, 139.

So, if ten minutes behind time : Ark. 1891, 132. Thirty minutes or more : Ga.

Railroads may not load or unload freight cars on Sunday : Ct. 3524; N.C.; nor permit any train or locomotive to run on Sunday except for transporting the mails, and except such as would be run for passengers exclusively, and except such as shall transport fruits, vegetables, live stock, and perishable fruits exclusively; provided that Sunday in this section means only that part of the day between sunrise and sunset, and trains having started on Saturday may run until nine o'clock on Sunday morning, and in order to reach the terminus or shops, but not later, nor for any other purpose : N.C. 1973; 1885, 92.

Freight may be loaded, etc. before 8 A.M., upon order of the commissioners : Ct. 1889, 23.

No railroad shall run any train between sunrise and sunset on Sunday ("except from necessity and mercy") : Ct. 8528.

It is unlawful for any railroad corporation owning or controlling railroads operating in this state, to load or unload, or permit to be loaded or unloaded, or to run or permit to be run, on Sunday, any locomotive, cars, or trains of cars, moved by steam power, except to unload cars loaded with animals : S.C. 1475.

No freight or excursion trains can be run on Sunday : Ga. 4578; 1883, p. 66.

It shall be lawful to run on said day their regular mail trains, and such construction or other trains rendered necessary by extraordinary emergencies other than those incident to freight or passenger traffic : S.C. 1476.

It is lawful for any train running by a schedule, but delayed by accident or other unavoidable circumstance, to be run until it reaches the point at which it is usual for it to rest upon a Sunday : S.C. 1477; Ga.

Or freight trains may run to their destination if scheduled to arrive not later than 8 A.M. : Ga.

The board of railroad commissioners may authorize the running upon any railroad of such through trains on Sunday as in the opinion of the board the public necessity and convenience may require, having regard to the due observance of the day : Vt. 1888, 18.

And mail trains may run before 10.30 A.M. and after 3 P.M. : Ct.

§ 8825. **Color Blindness, etc.** No railroad corporation shall employ, or keep in its employment, in a position which requires the person employed therein to distinguish form or color signals, any person, unless he has been examined for color blindness: Mass. 112,179; 1883,125; O. 8516-27 & 29; Ala. 1887,47.

Engineers are required to be examined as to their general qualifications by a state board, and licensed: Ala. 1887,59.

§ 8826. **Intoxication.** Whoever, having charge of a locomotive engine, or acting as conductor, brakeman, or switchman, is intoxicated while employed upon a railroad, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months, or both: Me. 51,66; Neb. 1,16,108.

So, five hundred dollars, or one year: Vt. 3411. One thousand dollars, or six months: Nev. 886.

So, it is made a misdemeanor: N.J. R.Rs. 119; Mich. 3368; N.C. 1972; Ark. 5480; Fla. 71,13; N.M. 2677. Fifteen years in the penitentiary: Miss. 1063. And he is liable for all damages: Mich.

It is unlawful for companies to employ engineers addicted to drink: O. 1891, p. 429.

If a railroad company employs or retains in its service a conductor, brakeman, or switchman who uses intoxicating liquors as a beverage, such fact being known to the president, superintendent, or any one of the directors of such road, such corporation (1) shall forfeit not less than three hundred nor more than three thousand dollars, with costs of prosecution, and shall also be liable for the damages which a person sustains by the employment or retention of such conductor, engineer, brakeman, or switchman: Vt. 3440.

(2) Is liable to a penalty of five hundred dollars: Mich. 3367.

§ 8827. **Employees.** Any railroad corporation may employ any inhabitant of the state, of the age of twenty-one years, not addicted to the use of intoxicating liquors, as a car driver or conductor, or in any other capacity, if fit and competent therefor: N.Y. 1890,565,42.

But no railway may employ a telegraph operator under eighteen, nor who has not had one year's experience: Col. 1891, p. 280; Ga. 1890,148.

Nor a conductor who has not had two years' experience as a trainman, nor an engineer who has not had three as a fireman: O. 1891, p. 320.

And no railway shall permit any engineer, conductor, fireman, brakeman, trainman, or telegrapher, who has worked for eighteen hours (twenty, Minn.) consecutively, to go on duty again without eight hours' rest: Minn. 1891,17; Col. 1891, p. 284.

So, twenty-four hours without eight hours' rest: O. 1891, p. 344.

And ten hours shall constitute a day's work, and extra services be paid for accordingly: O., Minn.

But contracts may be made for payment by miles run: Minn.

Conductors, baggage masters, engineers, brakemen, and other servants employed on trains or at stations, must wear caps, badges, etc.: Mass. 112,178; Vt. 3431; Ct. 3459; N.Y. 1890,565,43; N.J. R.Rs. 110; Ind. 3917; Ill. 114,95; Mich. 3380; N.C. 1958; Mo. 2579; Tex. 4228; Cal. 5488; Nev. 884; Uta. 2355; S.C. 1485; N.M. 2676. So the railroad police: N.H. 160,31. See § 8853.

It shall be the duty of every railroad corporation in this state to furnish to each of its employees, of every grade, a printed or written copy of its rules and regulations relative to their respective duties, and any conductor, engineer, servant, or other employee of any such railroad corporation, who shall knowingly violate any of the printed rules or regulations of such company, shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, or to an imprisonment in the county jail not more than three months, or both such fine and imprisonment, in the discretion of the court: Mich. 3369.

No company operating a railroad over thirty miles in length, in whole or in part within this state, shall permit or require any conductor, engineer, fireman, or brakeman on any train who has worked in his respective capacity for twenty-four consecutive hours, except in case of casualty, to again go on duty or perform any work until he has had at least eight hours' rest. Ten hours' labor shall constitute a day's work, and for every hour in excess of said ten hours' work that any conductor, engineer, fireman, brakeman, or any trainman of a company, who works under directions of a superior, or at the request of the company, shall be required or permitted to work, he shall be paid for said extra services in addition to his per diem: O. 1890, p. 113.

The conductors of all such passenger trains shall announce, or cause to be announced, the name of the station in each passenger car of every such train, twice inside each passenger car of every such train, the door of said car being closed at the time of such announcement, within a reasonable time before the arrival of any passenger train at every station at which said train from notice given is to stop. At junctions, crossings, and points where trains leave in different directions at or near the same time, the conductor of each train shall announce, or cause to be announced, distinctly, in each passenger car of his train, before starting, the direction in which his train is to go: Mich. 3326. Similar statute in: Tenn. 23

### **Art. 883. Duties of Transportation, and Rates.**

§ 8830. **General Principles.** (A) **Railways are Highways.** (See § 8801.)

That "the track of every railroad in this state is a public highway:" R.I. 158, 21; Pa. R.Rs. 54; W.Va. 54,71; Mo. 2630,2631; Ala. 1158; Miss. 1884,23,1.

Over which all persons have equal rights of transportation for passengers and freight on the payment of just compensation to the owner of the railroad for such transportation: Miss.

Subject to such rules and regulations in relation to the same, as to the size and construction of wheels, cars, and carriages, the weight of loads, and all other matters and things connected with the use of said railroad, as the president and directors may prescribe and direct: provided, that the said company shall have the exclusive control of the motive power: Pa. R.Rs. 54.

(B) **Companies are Carriers.** Any railroad company organized under this act, receiving freight for transportation, shall be entitled to the rights and be subject to the liabilities of common carriers: R.I. 158,21; N.Y. 1890,565,48; Mich. 3328; Neb. 1,16,111; Mo. 2630-1; Ore. 3234; S.C. 1333-4; Ga. 2083; Ariz. 1891,67.

Except as herein otherwise provided; but no such company shall be suffered to lessen or abridge its common law liability as a common carrier, unless by an agreement to be (1) signed by both parties thereto: Mich. 3328.

(2) Signed by the shipper, and expressed therein to be at owner's risk: Col. 1885, p. 309,5.

Compare Vol. I., § 4347; §§ 8801, 8840.

No contract, receipt, rule, or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made or entered into: Io. 1308; Ga. 3368.

Whenever property is received by any railroad to be transported to a place within or without the state, it shall not be lawful for such corporation to limit its common law liability (1) by any stipulation expressed in the receipt: Ill. 114,96; S.C. 1333.

(2) Except by a written contract, none of which shall be printed, which shall be signed by the owner or shipper of the goods or property to be carried: Mich. 3418.

(3) Except by order of the commissioners: Kan. 23,180; N.D. 1890,122,3.

A railroad may, by giving notice, limit its responsibility as carrier for baggage or freight to one hundred dollars for every one hundred pounds weight, unless the person offering such goods shall pay additional rate, and a general notice of such limitation of the company's responsibility placed in a conspicuous place at the receiving office, and inserted in the bills of lading, receipts, or tickets, shall be deemed sufficient notice: N.J. R.Rs. 27.

Whenever any property is received by any common carrier subject to the provisions of this act, to be transported from one place to another within this state, it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule, hereinafter provided for, its common law liability with reference to such property while in its custody as a common carrier (as hereinbefore mentioned); such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property: Minn. 509(d).

No notice, either express or implied, shall be held to limit the liabilities of any railroad company as common carriers, unless they shall make it appear that such limitation was actually brought to the knowledge of the opposite party, and assented to by him or them, in express terms, before such limitations shall take effect: Neb. 1,72,1,5.

No agreement made by a common carrier for exemption from liability for injury or loss occasioned by his own neglect or misconduct shall be valid: Va. 1296.

**(C) Connecting Companies.** (See §§ 8723-8726.) The provisions of this act apply to any continuous carriage, although carried partly on several roads and the compensation to be received by one or more corporations: Ark. 1887,81,7; Ore. 4034; Nev. 899; S.C. 1445.

All railway companies doing business in this state shall, upon the demand of any person or persons interested, establish reasonable joint through rates for the transportation of freight between points upon their respective lines within this state: Io. 1890,17,2. See § 8832a(C).

And whenever two or more railroads are connected together, the company owning either of said roads, receiving freight to be transported to any place on the line of either of the roads so connected, shall be liable as common carriers for the delivery of such freight to the consignee of said freight, in the same order in which such freight was shipped: Neb. 16,111.

And the road of a corporation shall include all the road in use by such corporation, whether owned or operated under a contract or lease by such corporation: S.C. 1443; Ark. 1887,80,10; provided, that nothing in this chapter contained shall be construed so as to require any corporation, or combination of corporations, to regulate their charges for shorter distances by their proportion of through rates between terminal or junctional competitive points: S.C.

All railway companies doing business in this state shall receive and transport freight over such route or routes as the shipper shall direct, at reasonable rates: Io. 1890,17,2; Minn. 2545; N.C. 1964; car-load lots shall be transferred without unloading from the cars in which the shipments were first made, unless transferred into or upon the connecting railway's cars at actual cost, and without unreasonable delay to the shipper: Minn. And compare §§ 8740-2, 8723(D).

When a common carrier accepts for transportation anything directed to a point of destination beyond the terminus of his own line or route, he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless, at the time of such acceptance, such carrier be released or exempted from such liability by contract in writing signed by the owner or his agent; and although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless, within a reasonable time after demand made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge: Va. 1295.

**(D) Application of the Statute.** All the provisions of this bill shall be held to apply to shipments made from any point within the state to any point within the state, whether the transportation of the same shall be wholly within this state or partly within this and adjoining state or states : Mo. 2656.

This act is not intended to repeal any law now in force, unless in direct conflict therewith, but is intended to be supplemental to such laws : Mo. [1887, Ex. p. 28,21] 2659.

Nothing herein contained shall be so construed as in any manner to abridge or control, or to in any way authorize the commissioners to abridge or control, or regulate the rates for freight or passengers charged by any railroad company in this state for carrying any freight or passengers which come from beyond the limits of this state, and to be carried through or across this state : Mo. 2686 ; Ga. 719(l).

Nor shall said act be so construed as to require said commission to investigate or call upon any railroad company, for rates of charges in transportation or travel from any point outside of this state to points outside of this state, or in any way interfere with such rates of charges : Miss. 1884,24.

The provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country, and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country : provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any state or territory as aforesaid : U.S. 1887,104,1.

**(E) Schedule Time.** (See also § 8824.) Every such corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice : N.Y. 1890,565,34 ; N.J. R.Rs. 114 ; Ind. 3925 ; Io. 2099 ; Kan. 23,55 ; Neb. 1,16,121 ; N.C. 1963 ; Tenn. 1897 ; Mo. 258 ; Ark. 5475 ; Tex. 4226 ; Cal. 5481 ; Nev. 879 ; Dak. Civ. C. 474 ; Ida. 2675 ; Uta. 2351 ; La. 1890,118 ; N.M. 2671 ; Ariz. 325 ; Oka. 1061.

And should the time be changed, due notice must be given connecting roads : Mo. 2583.

They shall "take and transport passengers and freight when offered:" W.Va. 54, 82c.IX.

Every railroad company in their public advertisements and time tables shall make use of the standard time of this state for all stations within this state, and every railroad company which violates this section shall forfeit twenty-five dollars : Ct. 3528.

Every railroad company shall run its trains each way for passengers at such times and in such manner as to afford reasonable facilities for receiving passengers from, and delivering them to, the other railroads in this state connected therewith, and when the business connections of the railroad of any company with the railroad of any other company are not convenient and reasonable for the accommodation of passengers over said road, said company shall make such connections as the public travel and business may require : Ct. 3529.

Any person who shall be aggrieved by the neglect of any railroad company to make

such connections may prefer a petition against such company to any judge of the superior court: Ct. 3530.

**(F) Accommodations.** It shall furnish sufficient accommodations for the transportation of all such passengers and property as shall within a reasonable time previous thereto be offered for transportation at the place of starting, and the junctions of other railroads, and at usual stopping places: N.Y.; N.J. R.Rs. 114; Ind. 3925-6; Ill. 114,84; Mich. 3324; Minn. 509; Kan. 23,55; Neb. 16,121, 122; N.C. 1963; Tenn. 1897; Mo. 2582; Ark. 5475-6; Tex. 4226; Cal. 5481; Nev. 879; Dak.; N.D. 1890,122,3; Ida. 2675; Uta. 2351; N.M. 2671-2; Ariz. 325-6; Oka. 1061; and shall take, transport, and discharge such passengers and property at, from, and to such places on the due payment of the freight or fare legally authorized therefor; and shall be liable to the party aggrieved in an action for damages for any neglect or refusal in the premises: N.Y.; N.J.; Ind.; Ill.; Mich.; Minn.; Neb.; N.C.; Ark.; Tenn.; Tex. 4227; Cal. 5482; Nev. 880; Dak. Civ. C. 475; Ida. 2676; Uta.; N.M.; Ariz.; Oka. 1062.

So, "shall receive all freight or live stock" offered at such places, and transport and deliver the same without unnecessary delay, according to contract: Mo. 2589.

Every railroad corporation doing business or owning any railroad wholly or in part within the limits of this state shall furnish reasonable and proper facilities and accommodations on the line of its road, within its limits, for the transportation of passengers and merchandise: R.I. 158,2; Va. 1208.

Every railroad corporation shall, upon reasonable notice, when within its power to do so, furnish suitable cars to any person applying therefor for the transportation of freight, and shall receive, transport, and deliver such freight with reasonable despatch, and provide suitable facilities for the receiving, handling, and delivering of such freight at any stations upon such railroad: Wis. 1798; Kan. 23,176; Mo. 2624; Col. 1885, p. 309,6.

When it has not sufficient cars under its control at the time, it shall furnish them in the order of the application: Col.

If they cannot be furnished for two days, then they shall be furnished to the applicants "in proportion to their respective needs therefor," with appeal to the railroad commissioner: Col.

Any company incorporated under this act shall have power to have constructed, or to purchase with the funds of the company, all machinery, engines, wagons, carriages, or cars for transportation of persons or any species of property on the said railroad: N.J. R.Rs. 103.

So soon as any portion of a railroad may be ready for transportation, the railroad company may, by its officers and agents, or by contractors, transport persons and property on the same, for which purpose there shall be kept in good order such locomotives, cars, and other things as may be proper. The company shall have the exclusive right of transportation on its road; and shall, upon the payment or tender of the lawful rates of toll, transport to and deliver at any depot or other regular stopping place indicated by the owner, such articles as shall be delivered or offered at any depot or other receiving place, in proper condition, to be transported. The property of all persons shall, as far as practicable, be transported in the order of time in which it shall be delivered or offered, and the tolls paid or tendered: Va. 1200.

Whenever any railroad shall fail to furnish, within a reasonable time after demand of a station agent, sufficient cars to supply any party desiring to ship property, then such party shall have the right to furnish cars, which shall be switched and hauled to their destination without unreasonable delay or discrimination. Any party furnishing

cars as aforesaid shall pay to the railroad corporation a reasonable compensation for the service rendered, and in case an agreement cannot be reached as to such compensation, the railroad commissioners shall fix the same : Mo. 2624.

When a company constructs a switch for the accommodation of shippers, they (it) shall be required to furnish a sufficient number of cars for the transportation of freight therefrom when so requested : Tex. 4239.

Where railroads within this state receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received ; the first received to be the first forwarded, without giving the preference to one over another ; and in case of failure to do so, they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in any wise resulting from delay : Tex. 4258b,8.

The railroad commissioners shall, on or before August 1st of each year, adopt a system of uniform rules, which they may change from time to time as found necessary, governing the distribution of cars to be loaded among applicants at stations and side tracks on all railroads in this state, and they shall serve a copy of such rules upon all railroad superintendents in this state. The railroad commissioners shall publish said rules, and shall also cause a copy of said rules to be posted in some public place at each station. If any railroad company shall refuse or neglect to furnish cars, as provided in the rules aforesaid, at any station or side track, complaint having been made to the railroad commissioners, or any one of them, it shall be their duty to immediately inquire into the cause of such delay in furnishing the cars demanded, and if they find just cause for complaint they are empowered and required to make such orders and rules as they may deem to be right and just to all parties concerned, the same to be enforced as other orders and rules are enforced under the provisions of this act ; provided all railroad corporations, in case of a shortage of cars, shall be required to furnish at all times each branch or division of its road its just proportion of cars required for the transportation of freight, according to the amount offered for shipment on each branch or division : N.D. 1890,122,7b.

§ 8831. **Fares and Freights. General Principles.** (A) A railroad corporation may establish for its sole benefit fares, tolls, and charges upon all passengers and property conveyed or transported on its railroad, at such rates as may be determined by its directors, and may from time to time by its directors regulate the use of its road : Mass. 112,180 ; Me. 51,9 & 43 ; Vt. 3426 ; N.J. R.Rs. 103 ; Pa. R.Rs. 54.

But such fares, tolls, and charges, and such regulations, shall at all times be subject to revision and alteration by the legislature, or by such officers or persons as it may appoint for the purpose, anything in the charter of a railroad corporation to the contrary notwithstanding : Mass., Me. See § 8833.

They may be revised by the railroad commissioners, after due notice, hearing, and opportunity to reply by the company, for a term not exceeding one year : Me. See § 8573.

The corporation has a lien upon freight for its tolls : Me. See § 8843.

Railways may charge "a just compensation," or such as is prescribed by law : Ore. 3251.

(B) All charges made for any services rendered in the transportation of freight on such railways, including the receiving, delivering, storing, and handling of such property, shall be reasonable and just, and all unreasonable and unjust charges for such service are prohibited and declared unlawful : Wis. 1798 ; Io. 1888,28,2 ; Minn. 508 ; Neb. 1887,60,1 ; Mo. 2631,2639 ; Ark. 1887,81,9 ; N.D. 1890,122,2 ; Mon. G. L. 700 ; U.S. 1887,1041.

And all charges shall be equal (see also § 8837 : N.D.



(C) It shall not charge, demand, or receive from any person, company, or corporation an unreasonable price for the transportation of persons or property, or for the handling or storage of freight, or for the use of its cars, or for any privilege or service afforded by it in the transaction of business: Wis. 1798; Io. 1878, 77,12; Kan. 23,178; Ore. 4029; Col. 1885, p. 310,8; S.C. 1334; Ariz. 1891,89,5.

Any railroad company or other corporation, organized under the title to which this is an amendment, may charge and receive for the transportation of passengers and freight on their road, or for the passage of vessels or articles of commerce through their canals, locks, or other works, or for the use of water from their canals or other works for power purposes, such reasonable rate as may be from time to time fixed by said corporation or prescribed by law: Minn. 2462.

(D) **Connecting Lines** may require either one to give security to the other for the payment of balances resulting from their mutual business, on such terms as they deem equitable; and may determine that their award may be suspended, after its acceptance, at the election of the party injured by the non-performance of the conditions thereof, by the other, with appeal to the supreme court: Me. 51,119.

When the route selected requires the use of the tracks of more than one railway company, the rate of transportation for the entire distance shall not exceed the rate for an equal distance over the tracks of a single company, except the addition of a reasonable rate of transfer. Where the different railway companies cannot agree upon the division of the earnings arising under this act, the board of railroad and warehouse commissioners shall adjust the same, taking into consideration the value of terminal facilities and all the circumstances of the haul; but in no case shall the aggregate cost to the shipper be increased. But where the several railway companies making up the through route have different schedule of rates over their respective lines, the through rate shall be based upon the average of the schedule of rates on their respective lines: Minn. 2546.

§ 8832. **Specific Rates.** (A) **Passengers.** But such compensation for any passenger and his ordinary baggage shall not exceed (1) three cents per mile: N.Y. 1887,724,9; 1890,565,37; N.J.; Pa.<sup>e</sup> R.Rs. 54; O. 3374; Kan. 23,168; Neb. 1887,59; Md. 23,170; Tex. 4256,4258b,9; S.C.<sup>b</sup> 1884,469; La. 1890,54.

(2) Three and a half cents: N.J.<sup>a</sup> Suppl. R.Rs. 78; Pa.<sup>f</sup>; Io. 1305; S.C.<sup>c</sup>

(3) Four cents: S.C.<sup>d</sup>; Ore. 4029; Tenn. 1873.

(4) Four and a half cents: S.C.<sup>d</sup>

(5) Five cents: N.C. 1957; Ark. 5447(9); Fla. 80,11.

(6) Six cents: N.M. 2721; Ariz. 1891,38.

(7) Ten cents: Nev. 885; N.M. 2665(11).

Except that ten cents may be charged for any trip: N.J.

So, twenty-five cents: Tex., S.C., Ariz.

Two cents only is allowed on the New York Central: N.Y.

The rates of fares and freights upon and over a railroad leased under the provisions of this chapter, or upon or over a railroad passing into the possession of a new corporation formed by a union of two or more corporations, shall not be increased above the rates that were in existence on the first day of August, 1883; and a reasonable and just reduction of rates shall be made from time to time to meet the decrease in operating expenses occasioned by a lease or union: N.H. 155,42.

Such railroad company may charge and receive, when its road is not more than twenty-five miles in length, not exceeding five cents per mile; when its road is more than twenty-five and not more than forty miles in length, not exceeding four cents per mile; and when its road is more than forty miles in length, not exceeding three cents per mile for each passenger and his ordinary baggage transported on said road, provided

that nothing relating to fares in this section shall apply to railroad companies now incorporated, or to any railroad now in operation, or to any railroad or part thereof located, or to be located, in the county of Kings, county of New York, or within the limits of any incorporated city : N.Y. 1883,384 ; 1890,565,37.

Railroads may charge passenger fares in places where they overcome an elevation of more than one thousand feet within two miles, seven cents for each one hundred feet of elevation ; and where the grade exceeds three hundred feet a mile, it may charge five cents for each one hundred feet ; and where the grade is over two hundred feet for at least two consecutive miles and the railroad does not exceed twenty miles in length, it may charge ten cents per mile : N.Y. 1890,565,37.

No consolidated railroad corporation shall charge a higher rate of fare per passenger, per mile, upon any part or portion of the consolidated line, than was allowed by law to be charged by each existing corporation thereon previous to such consolidation : N.Y. 1890,565,37.

Provided, however, nevertheless, that said rates of toll and motive power, charges so to be established, demanded, or received, when the cars used for such conveyance or transportation are owned or furnished by others, shall not exceed two and one half cents per mile for each passenger, three cents per mile for each ton of two thousand pounds of freight, three cents per mile for each passenger or baggage car, and two cents per mile for each burden or freight car, every four wheels being computed a car : Pa. R.Rs. 54.

Railroads not exceeding fifteen miles in length may charge (1) five cents per mile for passenger and fifteen cents per hundred pounds for merchandise for entire distance, or ten dollars per car, with reasonable deduction for way freight ; but this does not apply to railroads leased by the railroad whose main line is more than fifteen miles long : Pa. R.Rs. 150.

(2) Five cents for any passenger not going over one mile : N.Y.

Railroads may charge ten cents for each passenger carried, although the legal rates do not amount to said sum : N.J. R.Rs. 34 ; La.

And an excess of ten cents for fares paid on the train, provided receipts be given : N.J. R.Rs. 164 ; Kan. 23,169.

Such compensation for transporting any passenger, and his or her ordinary baggage, not exceeding in weight one hundred and fifty pounds, shall not exceed the following prices, viz. : for a distance not exceeding five miles, three cents per mile ; for all other distances, for all companies the gross earnings of whose passenger trains, as reported to the commissioner of railroads for the year one thousand eight hundred and eighty-eight equalled or exceeded the sum of three thousand dollars for each mile of road operated by said company, two cents per mile, and for all companies the earnings of whose passenger trains reported as aforesaid, were over two thousand and less than three thousand dollars per mile of road operated by said company, two and a half cents per mile, and for all companies whose earnings reported as aforesaid were less than two thousand dollars per mile of road operated by said company, three cents per mile : provided, that in future, whenever the earnings of any company doing business in this state, as reported to the commissioner of railroads at the close of any year, shall increase so as to equal or exceed the sum of two thousand or three thousand dollars per mile of road operated by said company, then in such case said companies shall thereafter, upon the notification of the commissioner of railroads, be required to only receive as compensation for the transportation of any passenger and his or her ordinary baggage, not exceeding in weight one hundred and fifty pounds, a rate of two cents and a half, or two cents, per mile, as hereinbefore provided : provided that roads in the Upper Peninsula which report as above provided passenger earnings exceeding three thousand dollars per mile shall not charge to exceed three cents per mile, and roads reporting less than three thousand dollars per mile shall be allowed to charge not to exceed four cents per mile : Mich. 3323 ; 1891,90.

In Wisconsin it is provided that the Chicago, Milwaukee, and St. Paul, Western Union, and the Chicago and Northwestern Railways shall not demand or receive a greater compensation for passengers or freight than is fixed for corresponding distances in a regular published schedule of the Chicago, Milwaukee, and St. Paul, enforced June 15, 1872; and this provision applies to all railroads owned, leased, or operated by any of said companies: Wis. 1803.

Each of said companies is required to sell five hundred mile tickets transferable and also round trip tickets at the uniform rate of three cents per mile: Wis. 1803.

Railways are classified, according to the gross amount of their earnings per mile for the preceding year, into three classes: Class A, all railroads earning more than four thousand dollars per mile; Class B, from three thousand to four thousand dollars; and Class C, less than three thousand dollars: Io. 1874,68,1.

Railroads are required to make special returns to the governor in January of gross receipts for the year previous for purpose of such classification: Io. 1874,68,7.

The compensation for transportation of passengers with ordinary baggage not exceeding one hundred pounds in weight is in Class A three cents, Class B three and one half cents, Class C four cents, per mile: Io. 1874,68,2.

On a railroad on which different rates are not prescribed by law, the following rates of toll may be charged for transportation, to wit:—Of a person and his baggage within a hundred and fifty pounds, not exceeding six cents per mile; of produce and other articles, except gypsum, lime, guano, and other specific manures, not exceeding eight cents per mile; and gypsum, lime, guano, and other specific manures, not exceeding four cents per ton of twenty-two hundred and forty pounds per mile; and for the transportation of any person, or of any produce or other articles, for a distance less than ten miles, a charge may be made at the foregoing rates as for ten miles. And where articles weigh less than four pounds to the cubic foot, a toll may nevertheless be charged on each cubic foot as for four pounds weight. And when the articles in any one consignment weigh less than one hundred pounds, a toll may be charged on the same as for one hundred pounds weight. If for the transportation of any person with his baggage or for any consignment, the whole charge at the rates before mentioned would be less than twenty-five cents, the same may nevertheless be charged as a minimum. For the weighing, storage, and delivery of articles at any depot or warehouse of the company, a charge may also be made not exceeding the ordinary warehouse rates charged in the city or town in which, or nearest to which, the depot or warehouse is situated: Va. 1202.

In West Virginia railroads are divided into four classes: Class A, those with gross earnings of ten thousand dollars per mile or more; Class B, with gross earnings between eight thousand and ten thousand dollars per mile; Class C, from four thousand to eight thousand dollars; and Class D, below four thousand dollars. Railroads in Class A may charge fares for a person with ordinary baggage not exceeding one hundred pounds in weight, three and one half cents for any distance less than fifty miles, and so in a graduated scale down to two and seven tenths cents for any distance exceeding three hundred and fifty miles. Class B, in the same way, from four cents per mile to three and one fourth cents. Class C, from four and one half cents to four cents. Class D, from five to four cents: W.Va. 5482c(III).

In Missouri railroads are divided into three classes, A, B, and C: A includes through or trunk lines; B, branch roads owned or occupied by such trunk lines; C, all other railroads or parts of railroads: Mo. 2672.

Railroads are limited to a compensation per mile for the transportation of passengers with ordinary baggage not exceeding one hundred pounds in Class A, not exceeding three cents per mile; in B and C, not over four cents per mile: Mo. 2673.

Railroad companies having roads not exceeding fifty miles in length may charge for the carriage of each passenger, and his or her ordinary luggage, not exceeding ten cents

per mile for the distance such passenger is carried, and such companies, for loading, carrying, and unloading freights, may charge not exceeding forty cents per hundred pounds for any distance: Ark. 5497.

The maximum sum for carrying each passenger, first-class passage: on lines of railroad fifteen miles or less in length, eight cents per mile; on lines over fifteen miles in length and less than seventy-five miles in length, five cents; on lines over seventy-five miles in length, three cents per mile: Ark. 1887,129,1.

Provided, further, all passengers who may fail to procure regular fare tickets shall be transported over all railroads in this state at the same rate and price charged for such tickets for the same service: Ark. 1887,129,1.

With one hundred and fifty pounds of baggage: Ark. 1887,129,2; Ariz.

One hundred pounds: Kan., Tex.

Two hundred pounds: Neb.

Where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents: Tex. 4258b,9.

In all cases when any such corporation, to induce aid in its construction, either by donation or subscription to its capital stock, shall desire to fix the rates for any period of time for the transportation of passengers or property, such corporation may adopt a resolution fixing such rates and the time during which the same shall continue, and have such resolution recorded in the office of the recorder of deeds in the several counties through which said road runs or is proposed to be run, and during the time for which said rates are so fixed, the same shall in no case be amended by said corporation or its successors, provided that said rates shall not exceed the rates allowed by law: Tex. 4218.

Provided, further, that when the passenger fare does not end in five or nought, the nearest sum so ending shall be the fare; provided, further, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile: Tex. 4258b,9.

The provisions of this act shall be construed to apply to and affect only the transportation of passengers, freight, and cars between points within this state; and this act shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns: Tex. 1891,51,22(a).

All railroad corporations must fix and publish their rates of charges for freightage and fares from one depot to another on their various lines of road in this state, graduated as follows:—

1. One rate of charges per mile for a distance of one hundred miles or over;
2. One rate for a distance of seventy-five and less than one hundred miles, charging not exceeding ten per cent per mile more than the first rate;
3. One rate for a distance of fifty and less than seventy-five miles, charging not exceeding fifteen per cent per mile more than the first rate;
4. One rate for a distance of twenty-five and less than fifty miles, charging not exceeding twenty per cent per mile more than the first rate;
5. One rate for a distance not exceeding twenty-five miles, charging not exceeding twenty-five per cent per mile more than the first rate.

But in no case, nor in any class of charges hereinbefore named, shall any railroad corporation charge or receive more than ten cents per mile for each passenger, nor fifteen cents per mile for each ton of freight transported on its road. For every transgression of these limitations the corporation is liable, to the party suffering thereby, treble the entire amount of fare or freightage so charged to such party. In no case is the corporation required to receive less than twenty-five cents for any one lot of freight for any distance: Cal. 5489.

The rate shall not exceed the rates charged (1) on the first day of January, 1885: Ore. 4029.

(2) On November 1, 1880 : Neb. 1,72,5,2.

Each railroad shall also run a second-class or smoking car for passengers, for which they shall sell tickets at a rate not to exceed two and a half cents per mile for the first class, three cents per mile for the second and third classes, and four cents for the fourth class; provided, that railroad corporations may charge for short distances, where the charges per mile would be less than twenty-five cents, the sum of twenty-five cents for first-class passage, and fifteen cents for second-class passage and children for such distance : S.C. 1884,469,1.

(B) Freight. (See also in A, and § 8832a, B). And in the same way five cents for each one hundred pounds of merchandise carried, whatever be the legal charge : N.J. R.Rs. 35.

Fifty cents per hundred pounds per hundred miles : Tex. 4257.

Or thirty cents for distances under fifty miles : Tex. 1879,109.

So twenty-five cents ; or ten cents per cubic foot : Tenn. 1893.

Twenty cents per ton per mile : Nev. 885.

Fifteen cents per ton, or forty cubic feet : N.M., Ariz. So, on railroads not exceeding thirty miles in length : W.Va. 54,82e.

Railroads may charge for freight or bulky goods the same charge for every eighty cubic feet that is limited by law for one ton in weight : N.J. R.Rs. 33.

Nor shall said company charge more than ten cents per mile per ton for the transportation of any description of property : N.J. R.Rs. 103.

That the transit duty on lime, wood, stone, ashes, manure, lumber, coal, iron ore, and similar low-priced articles, shall be two cents per gross ton : N.J. R.Rs. 149.

Such company may receive for transportation of property not exceeding five cents per ton per mile, when the same is transported a distance of thirty miles or more, and in case the quantity transported is less than one ton in weight, or any quantity is transported a less distance than thirty miles, such reasonable rate as may be from time to time fixed by the corporation or prescribed by law ; but until a tariff of specific rates is established by law for the transportation of property of such bulk that a quantity equal to the tonnage capacity of the car cannot be carried in it, the corporation may contract for space in the car sufficient to secure the safe transportation of such property, at a rate which shall not exceed five cents per ton per mile if such car were loaded to its tonnage capacity ; and for the transportation of coal, pig-iron, limestone, iron ore, or undressed stone or lumber, not more than five cents per ton per mile shall be charged for any distance of ten miles or more, and, in case the same be transported a less distance than ten miles, such reasonable rates as may from time to time be fixed by the corporation or prescribed by law ; and the corporation may charge on such freight a reasonable rate for loading and unloading, when the same is in fact done by the corporation : O 3375.

The provisions of the three next preceding sections shall not apply to any railroad in course of construction, and the gross earnings of which are less than four thousand dollars per mile per annum, when such railroad is not owned or operated by companies operating another railroad ; provided, that such exemption shall not continue longer than five years after cars are run for the transportation of freight and passengers on said road : O. 3377.

A company may demand and receive for the transportation of passengers on a branch road a fare not exceeding six cents per mile, and for transportation of property such reasonable rate as may be from time to time fixed by the company or prescribed by law ; but if the length of such branch exceeds ten miles, the charge for passengers and freight upon the excess shall be the same as provided by law for main lines : O. 3378.

In transporting freight by the car, loaded by the shipper, and unloaded by the con-

signee, no railroad company shall charge for transporting each of such cars more than eight dollars for any distance not exceeding ten miles, nor more than fifty cents per mile for the second ten miles, nor more than twenty-five cents per mile for the third ten miles; and for distances exceeding thirty miles, in no case shall the charge between any two points on the said railroad exceed the minimum charge on the entire line: Mich. 3323 amt.; 1891,80.

This provision shall not apply to the upper peninsula, nor to any company operating less than fifteen miles of railroad: Mich.

In transporting loaded or empty cars from or to the side tracks of any manufacturing or other establishments located on the line of any railroad, no charge shall be made, and for transporting such cars to the main line or side tracks of any other railroad, no railroad company shall charge for each of such cars to or from such side tracks a sum exceeding one dollar for each half-mile of distance so transported: Mich. 3422c.

In the month of June in each year, every corporation operating a railway in this state shall fix its maximum rates of fare for passengers and freight, for transportation of timber, wood, and coal, per ton, cord, or thousand feet per mile; also its fare and freight per mile for transporting merchandise and articles of the first, second, third, and fourth classes of freight; and, on the first day of July following, shall put up at all the stations and depots on its railway, a printed copy of such fare and freight, and cause a copy to remain posted during the year. For wilfully neglecting so to do, or for wilfully receiving higher rates of fare or freight than those posted, the company shall forfeit and pay to the state of Iowa, for the use of the school fund, not less than one hundred dollars nor more than two hundred dollars, to be recovered in any civil action in the name of the state; and it is hereby made the duty of the several district attorneys within their respective districts to sue for and recover all sums forfeited as aforesaid; and such corporation shall also forfeit and pay to the person injured double the amount of compensation or charge illegally taken, to be recovered by such person in a civil action: Io. 1304.

And for the transportation of property on said road, other than coals, ores, or other minerals, not exceeding five cents per ton per mile, but such corporation shall not demand or receive, for the transportation of coals, ores, or other minerals, a rate exceeding one and a half cents per ton per mile: Md. 23,170.

A most elaborate schedule of classified freight rates exists in West Virginia: see W.Va. 5482c(VII & VIII).

Ordinary freight rates on first class railroads range from five cents per ton per mile for less than fifty miles, down to two and one half cents for distances exceeding two hundred and fifty miles; in the second class in the same way from four cents to two and one quarter cents; in the third class from three and one half cents to two cents; and in the fourth class from three and one half cents to one and three fourths cents: W.Va. 5482,c(VIII).

Freights are divided into four general classes, one, two, three, and four; into seven special classes, D, E, F, G, H, I, and J. D comprises grain in car loads; E, flour in lots of fifty barrels or more, and lime in lots of twenty-four barrels or more; F, salt in lots of sixty barrels or more, and cement, water-lime, and stucco in lots of twenty-four barrels or more; G, lumber, lath, and shingles, in car loads; I shall comprise coal, brick, sand, stone, railroad ties, and cord wood, and all heavy fourth class articles, in car loads; and all articles not here enumerated belong to the four general classes to be classified by the railroad commissioners as hereinafter provided: Mo. 2674.

Railroads may charge for freight in Class D not exceeding six cents per one hundred pounds for the first twenty-five miles, and four cents per hundred pounds for the second twenty-five miles, and two cents for each additional twenty-five miles or part thereof; unless the fraction is less than thirteen miles, in which case the rate shall be one cent for such fraction, unless the whole distance be over two hundred miles, when no greater

rate than one half cent per hundred pounds shall be received for twenty-five miles. Class E, not exceeding twelve cents per barrel for the first twenty-five miles, and eight cents per barrel the second twenty-five miles, and four cents thereafter; but not more than one cent for each additional twenty-five miles over the first two hundred miles. Class F, not exceeding fifteen cents per barrel for the first twenty-five miles, and three and one half cents for each additional twenty-five miles. Class G, not exceeding eight dollars per car-load for the first twenty-five miles, five dollars for the second twenty-five miles, and two dollars for each additional twenty-five miles. Class H, not exceeding ten dollars per car-load for the first twenty-five miles, seven dollars for the second twenty-five miles, and four dollars in the same way. Class I, not exceeding eleven dollars per car-load for the first twenty-five miles, six dollars for the second twenty-five miles, and three dollars in the same way. Class J, eight dollars, six dollars and two and one half dollars in the same way. In computing the rates of freight according to this act the distance shall be computed from the point where it is received in this state, notwithstanding it may pass from one road to another: Mo. 2675.

There is "an act to fix the maximum rates that railroad companies may charge for the transportation of coal mined within the state of North Dakota:" N.D. 1890,125.

Such corporation shall not be required to transport domestic animals, nitro-glycerine compounds, gunpowder, acids, phosphorus, and other explosive or destructive or combustible materials, except upon such terms, conditions, and rates of freightage as its board of directors may from time to time prescribe and establish: N.M. 2665(11).

NOTES. — <sup>a</sup> Of railroads created under special charter only. <sup>b</sup> Provided the passenger earnings of said road exceed \$1800 per mile per year. <sup>c</sup> On roads whose passenger earnings are from \$1,000 to \$1,800 per mile. <sup>d</sup> On roads whose passenger earnings are from \$500 to \$1,000 per mile, or, if under \$500, four and a half cents. <sup>e</sup> For through, <sup>f</sup> for way passengers.

§ 8832a. (A) **Posting and Schedules.** A table of prices for the conveyance of persons and property between the several stations on their road, and between their stations and the stations of other roads, with which they have a business connection, shall be posted in their depots by the proprietors of every railroad: N.H. 160,3; Io. 1888,28,7; Minn. 514; Neb. 1887,60,6; Mo. 2639; Cal. 5489; Col. 1885, p. 310,8; N.D. 1890,122,8(a); Mon. G. L. 700; S.C. 1444; 1883,125,2; Miss. 1884,23,6.

Within ten days after their approval by the commissioners, with certificate of such approval: Miss.

All railroad companies shall keep posted in a conspicuous place in their depots a list of charges for carrying freight, specifying name of place, class of freight, and charge for carrying the same: Ky. 90a,IV,1; Mo. 2601,2639; Ark. 1887, 81,7; Tex. 1891,51,8; 4258b,7; Nev. 898; Col. 1885, p. 310,8; Ore. 4033; N.D.; N.C. 1965; S.C. 1444; 1883,325,2; Ala. 1161; Miss. 1884,23,6; U.S. 1887,104,6.

Shall adopt and keep posted up schedules, which shall plainly state: first, the different kinds and classes of property to be carried; second, the different places between which such property shall be carried; third, the rates of freight and prices of carriage between such places, and for all services connected with the receiving, delivery, loading, unloading, storing, or handling the same. Such schedules may be changed from time to time as hereinafter provided: Minn.; Neb.; Nev. 898; Mo. 2639; Ore. 4033; N.D.; S.C. 1883,325,2.

Such charges shall not be increased without giving (1) fifteen days' notice: N.C.

(2) Ten days: Mo., Minn., Neb., N.D., Tex., U.S.

(3) Five days: Ark., Tex., Nev.

- (4) Six months : Ore.
- (5) No notice is required : Ky., Col., Ala., Miss.
- (6) Twenty days : Mo.
- (7) Thirty days : N.H., S.C.

Nor reduced without the commissioners' assent : Miss. 1884,23,7.

Rates on timber, wood, and bark must be posted October 1, annually : Me. 51,42.

Changes in passenger rates or time tables must be published three days before they take effect : S.C. 1889,236.

They may not be changed for six months : Ore.

Every company shall, from time to time, cause a list of its rates of toll to be printed, and have such rates posted where they can readily be seen by persons using its work : Va. 1226.

All railroad corporations shall keep constantly posted in a conspicuous place, in all their ticket offices and passenger and freight depots, a printed copy of the first, second, third, fourth, and fifth sections of this act, together with a table of distances between each and every station : W.Va. 54,82c,1V.

When any schedule shall have been made or revised as aforesaid, see (C) below, it shall be the duty of all such railroad companies, as soon as practicable thereafter, to post at their respective stations, in a conspicuous place, [at least two] copies of said schedule for the protection of the people : Mo. 2641 ; S.C. 1888,27,3 ; Ga. 719(f).

And it must be published in newspapers : Ga.

Every common carrier subject to the provisions of this act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers shall be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected : U.S. 1887,104,6.

And said commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published : Neb. 1887,60,7 ; U.S. 1887,104,6.

Any common carrier subject to the provisions of this act, receiving freight in the United States to be carried through a foreign country to any place in the United States, shall also in like manner print, and keep for public inspection at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment ; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production ; and any law in conflict with this section is hereby repealed : U.S. 1887,104,6.

The commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs : U.S. 1887,104,6 ; 1889, March 2.



Reduction in such published rates, fares, or charges may be made (1) without previous public notice, but whenever any such reduction is made, notice of the same shall immediately be publicly posted: Io. 1888,28,7; Mo.; Neb.

(2) After three days' notice as above: U.S.

Every common carrier subject to the provisions of this act shall file with the board of railroad commissioners of this state copies of its schedules of rates, and shall promptly notify said commissioners of all changes made in the same: Io. 1888,28,7; Mo.; Minn.; Neb. 1887,60,7; Ore. 1891, p. 124; N.D. 1890,122,8(d); U.S. 1887,104,6.

Every such common carrier shall also file with said commissioners copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party: Io. 1888,28,7; Minn. 514(d); Neb. 1887,60,7; Mo. 2640; N.D.; S.C. 1883,325,3; U.S. See also § 8576.

Neither said board of railroad commissioners nor any railroad company shall raise the charge for the transportation of freight on any railroad without first giving sixty days' public notice of such change in such manner as the commissioners may determine: Kan. 23,183.

(B) When any common carrier shall have established and published its classifications, rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in such published schedule of classifications, rates, fares, and charges as may at the time be in force: N.D. 1890,122,8c; S.C. 1883,125,2; U.S. 1887,104,6. And the same would be implied in other states.

So, no reduction from such tariff shall be made in favor of any person which is not made in favor of all by a change in the published rates: Ala. 1161.

The various railroad corporations doing business within the state of Indiana shall not, at any time, increase or advance their rates of freight, or charge for the transportation thereof from one point to another a sum greater than the rate of freight or charge for transportation asked or charged by said railroad corporations at the time such freight is offered or tendered to said railroad corporations for transportation: Ind. 4038.

And every person and corporation engaged as aforesaid shall receive, load, unload, transport, store, and deliver to the consignee thereof any and all property offered for shipment at and for charges not greater than those specified in such schedule: Ark. 1887,81,7.

Every company whose line of road extends to any place in the vicinity of, or to a point of intersection with, any of the navigable canals or other works of internal improvement belonging to the state, shall fix and establish a tariff of rates for the transportation of merchandise, produce, and other property consigned to or from such place or point of intersection, and shall not charge or receive any higher rate for transporting similar merchandise, produce, or property over a shorter distance of its road than is charged or received according to such fixed tariff for transportation to and from such place of intersection: O. 3366.

Every such company shall publish its tariff of rates so established, on property consigned to and from such places or points of intersection, and cause the same to be kept conspicuously posted at the several business stations on its road: no such company, its officers or agents, shall charge or receive, directly or indirectly, for transporting any property consigned as aforesaid, any less rate than is designated on such printed card, until such rate is changed by an order of the board of directors of such company, and at least ten days' notice of such change given by bill or card to be posted as aforesaid;

and no such company, its officers or agents, shall evade, or attempt to evade, by drawback, free warehousing, or in any other manner, the payment of full freightage, according to the printed tariff of rates, as herein provided: O. 3367; Io. 1888,28,7; Va. 1205-6.

**(C) Joint Rates.** And in cases where passengers or freight pass over lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint schedules of rates or fares, or charges or classifications for such lines or routes, copies of such joint schedules shall also in like manner be filed with said commission: Minn. 514(d); Neb. 1887,60,7; Mo. 2640; N.D. 1890,122,8(d); S.C. 1883,325,3. Compare § 8576.

Such joint schedules of rates, fares, charges, and classifications, for such lines, so filed as aforesaid, shall also be made public by such common carriers (1) in the same manner as hereinbefore provided for the publication of tariffs upon its own lines: N.D. 1890,122,8d.

(2) So far as may be in the judgment of the commission deemed practicable: Neb.; U.S. 1887,104,6; 1889,382.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon, than is specified in the schedule filed with the commission in force at the time: U.S. ib.

No common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published: Neb. 1887,60,7.

In the event that said railway companies fail to establish through joint rates, or fail to establish and charge reasonable rates for such through shipments, it shall be the duty of the board of railroad commissioners, and they are hereby directed, upon the application of any person or persons interested, to establish joint rates for the shipment of freight and cars over two or more connecting lines of railroad in this state, and in the making of such rates, and in changing or revising the same, they shall be governed as near as may be by all the provisions of chapter twenty-eight of the acts of the twenty-second general assembly, and shall take into consideration the average of rates charged by said railway companies for shipments within this state for like distances over their respective lines, and rates charged by the railway companies operating such connecting lines for joint inter-state shipments for like distances. The rates established by the board of railroad commissioners shall go into effect within ten days after the same are promulgated by said board, and from and after that time the schedule of such rates shall be *prima facie* evidence in all of the courts of this state that the joint transportation of freight and cars upon the railroads for which such schedules have been fixed [*sic*]: Io. 1890,17,3.

**Penalties.** If any railroad neglect to publish its schedule of rates, it is the duty of the railway commissioners to make out a schedule and reasonable rates for such railroad: Mo. 2641; Ore. 1891, p. 124; Miss. See also § 8833,B.

If any such common carrier shall neglect or refuse to file or publish its schedule of rates, fares, and charges, as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus: Minn. 514(g); Neb. 1887,60,7; N.D. 1890,122(g); 1891,96; U.S. 1887,104,6.

And also injunction: U.S.

Or if any common carrier shall refuse or neglect to carry out such recommendation made and published by such commission, such common carrier shall be subject to a writ of mandamus: Minn.; N.D.

§ 8833. **Regulation of Rates. (A) General Revision.** When the net income of any railroad shall exceed ten per cent upon its stock, the legislature may alter and revise the rates of toll for freight and passengers as they may deem just: N.H. 157,20.

The supreme court may, at a session holden in a county through which the road passes, on the application of three freeholders of the state, and due notice thereof to the corporation, from time to time, alter or reduce such rates of toll, according to the provisions, if any, contained in the charters of such corporations: Vt. 3426; 1888,37.

The legislature may, from time to time, alter or reduce the rate of freight, fare, or other profits; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than ten (fifteen, Ark.) per centum per annum on the capital actually expended; nor unless, on an examination of the amounts received and expended, to be made by the board of railroad commissioners, they shall ascertain that the net income derived by the company from all sources for the year then last past shall have exceeded an annual income of such per cent upon the capital of the corporation actually expended: N.Y. 1890,565,38; 1883,381; Ark. 5473.

All contracts, stipulations, and conditions regarding the right of controlling and regulating the charges for freight and passengers upon railways, heretofore made in granting land or other property, or voting taxes to aid in the construction of or franchises to railway corporations, are expressly reserved, continued, and perpetuated in full force and effect, to be exercised by the general assembly, whenever the public good and the public necessity requires such exercise thereof: Io. 1306.

When the net profits of any company which is governed by the twenty-sixth section of the said act, passed on the eleventh day of March, eighteen hundred and thirty-seven, shall amount to a sum equal to the capital stock, with six per centum per annum interest thereon, its tolls may be fixed and regulated as prescribed by that section: Va. 1241.

When the net profits of any company heretofore or hereafter incorporated, which may be governed by this chapter, shall be such that but for this section dividends might be declared out of the said profits exceeding the rate of fifteen per centum per annum on the capital stock invested, laws may be passed for reducing the tolls of the company. But no law shall reduce the tolls so as to prevent dividends of fifteen per centum per annum within thirty years from the time the first dividend of profits of the said company was declared, or so as to prevent dividends of twelve per centum per annum after the said thirty years and before fifty years from the same time, or so as to prevent dividends of ten per centum per annum after the said fifty years: Va. 1242.

The right is reserved to the legislature to enact, from time to time, laws applicable to all the railroad corporations in the state, establishing reasonable maximum rates of charges for the transportation of passengers and freights, and providing for the correction of abuses, the prevention of unjust discriminations between through and local or way freight and passenger tariffs, and for the protection of the just rights of the public: W.Va. 54,55.

The general assembly may, when any railroad shall be opened for use, from time to time alter or reduce the rate of freight, fare, or other profits upon such road, but the same shall not, without the consent of the corporation, be so reduced as to reduce said profits less than six per cent per annum on the capital actually expended, nor unless on an examination of the amounts received and expended, to be made by the auditor or other officer charged with the duty, they shall ascertain that the net income derived by the company from all sources, for the year then last past, shall have exceeded an annual income of six per cent upon the capital of the corporation actually expended: N.C. 1961.

The state shall have the power, by appropriate legislation, to prevent unjust discriminations against and extortions for freights and passage over all railroads in this state: Tenn. 1272.

The legislature shall from time to time, when it may deem proper, change the rates of fare and freight of all narrow gauge railroads constructed under the provisions of this act : Nev. 840.

To aid and encourage construction of railroads in this territory, all the property of every kind and description of every corporation formed under this act shall be exempt from taxation of every kind and description until the expiration of six years from and after the completion of its road or roads; and the maximum charges for fares and freightages as fixed by this act shall not be reduced so as to affect any such corporation until the surplus earnings of its roads and telegraphs shall exceed ten per cent upon the cost of the construction and equipment of its roads and telegraphs (including the cost of right of way), depots, shops, water rights, and stations : N.M. 2691.

(B) **The railroad commissioners** are directed to make for each railroad doing business in the state a schedule of reasonable maximum rates for the transportation of passengers, freights, and cars on each of said roads; and this schedule shall be taken in all courts in suits for extortion, etc., as *prima facie* evidence that such rates are reasonable maximum charges: N.H. 155,13; Ill. 114,131; Io. 1888,28,17; Kan. 23,178; Tex. 1891,51,3; S.C. 1888,27,2 & 3; Ga. 719(e) (f); 1888, p. 38. And compare § 8832a.

So only when the railroad fails to publish rates : Mo. 2641; Miss. 1884,23,6.

These rates are binding on the roads : N.H.

The commissioners may revise such rates from time to time : N.H., Ill., Io., Tex., Ga.

So no railroad is liable for extortion (§ 8834), whose rates have been approved by the railroad commission : Miss. 1884,23,3.

It is made the duty of the railroad commissioners to investigate and ascertain whether the provisions of this act are violated by any railroad, and institute prosecutions for such violations : Ill. 114,130; Io. 1888,28,12; S.C. 1883,325,5; U.S. 1887,104. Compare §§ 8572,8573.

Whenever any person upon his own behalf, or class of persons similarly situated, or any firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, shall make complaint to said board of railroad commissioners that the rate charged or published by any railroad company, or the maximum rates fixed by said commissioners in the schedules of rates made by them under the provisions of (§ 8832a), or the maximum rate that now or hereafter may be fixed by law, is unreasonably high or discriminating, it shall be the duty of said commissioners to immediately investigate the matter of such complaint. If such complaint appears to be well founded, and not trivial in character, the board shall fix a day for hearing the same, and shall notify the railroad company : Io. 1888, 28,18.

Upon such hearing so provided for, the said commissioners shall receive whatever evidence, statements, or arguments either party may offer or make pertinent to the matter under investigation; and the burden of proof shall not be held to be upon the person or persons making the complaint, but the commissioners shall add to the showing made at such hearing whatever information they may then have, or can secure from any source whatsoever, and the person or persons complaining shall be entitled to introduce any published schedules of rates of any railroad company, or evidence of rates actually charged by any railroad company for substantially the same kind of service, whether in this or any other state; and the lowest rates published or charged by any railroad company for substantially the same kind of service, whether in this or in any other state, shall, at the instance of the person or persons complaining, be accepted as *prima facie* evidence of a reasonable rate for the services under investigation, and if the railroad company complained of is operating a line of railroad beyond the state of Iowa, or if it appears that it has a traffic arrangement with any such railroad company,

then the commissioners, in determining what is a reasonable rate, shall take into consideration the charge made or rate established by such railroad company, or the company with which it has traffic arrangements for carrying freight from beyond the state to points within the state and from within the state to points beyond (the) state; and if such company be operating a line of railway beyond the state, they shall also take into consideration the rate charged or established for a substantially similar or greater service by such company in any other state in which said railroad company operates a line of railway: Io. 1888,28,19.

After such hearing and investigation, the said commissioners shall fix and determine the maximum charge to be thereafter made by the railroad company or common carriers complained of, which charge shall in no event exceed the one now or hereafter fixed by law; such decision shall specifically set out the sums or rate which the railroad company or common carrier so complained of may thereafter charge or receive for the service therein named, and including a classification of such freight, and the said commissioners shall not be limited in their said decision and the schedule to be contained therein to the specific case or cases complained of, but it shall be extended to all such rates between points in this state and whatever part of the line of railway of such company or common carrier within this state as may have been fairly within the scope of such investigation; and any such decisions so made and entered on record of said commissioners, including any such schedules and classifications, shall, when duly authenticated, be received and held in all suits brought against any such railroad corporation or common carrier wherein is in any way involved the charges [*sic*] of any such corporation or carrier mentioned in said decisions, in any of the courts of this state, as *prima facie* evidence that the rates therein fixed are reasonable maximum rates: Io. 1888,28,20.

That in case the commission shall at any time find that any part of the tariffs of rates, fares, charges, or classifications, so filed and published as hereinbefore provided, are in any respect unequal or unreasonable, it shall have the power, and is hereby authorized and directed, to compel any common carrier to change the same, and adopt such rate, fare, charge, or classification as said commission shall declare to be equal and reasonable: Minn. 514(e); N.D. 1890,122,8(e); 1891,96.

In case such common carrier shall neglect or refuse for ten days after such notice to substitute such tariff, it shall be the duty of said commission to immediately publish such tariff of rates, fares, charges, or classifications as they have declared to be equal and reasonable, and cause the same to be posted at all the regular stations on the line of such common carrier in this state, and thereafter it shall be unlawful for such common carrier to charge or maintain a higher or lower rate, fare, charge, or classification than that so fixed: Minn. 514(f); N.D. 1890,122(f); 1891,96. "Until and unless a court order otherwise:" Minn. 1891, p. 179.

After notice and hearing: N.D.

If the complaint alleges unreasonable charges the railroad commissioners, if upon hearing there appears reasonable grounds for believing the facts alleged to be true, and that the public good will be promoted by an examination thereof, they give notice to the carrier, and if it does not modify such charges within ten days after such notice, the board may proceed to investigate, and give notice of hearing; and if upon such hearing the facts alleged are sustained, the board shall find and determine what would be reasonable charges for the class complained of, and give notice to the carrier of such finding, which shall be *prima facie* evidence in all proceedings wherein is involved the reasonableness of such charges: Mo. 2650-2. So in effect in: Minn. 1891, p. 179.

Upon complaint and application of the mayor and council of any city, or trustees of any township, or of twenty-five legal voters of any such city or township, the railroad commissioners shall make an examination of the rate of freight tariff and of the con-

dition and operation of any railroad within such city or township, giving due notice to the railroad company; and if the complaint appear well founded, they shall so adjudge, and shall decide what is a reasonable charge for such freight, which shall be *prima facie* evidence thereof in all actions for such service: Kan. 23,185.

And upon complaint in writing made to the board of railroad commissioners, that an unreasonable price has been charged, such board shall investigate said complaint, and if sustained shall make a certificate, under their seal, setting forth what is a reasonable charge for the service rendered, which shall be *prima facie* evidence of the matters therein stated: Kan. 23,178; Mo. 2652.

In all cases where complaint shall be made that an unreasonable charge is made, or that the rates charged for freight are unjust, unreasonable, or extortionate, and the board shall find such complaint to be true, they shall require a modified charge for the service rendered, such as they shall deem to be reasonable, and shall certify their finding to the managing officer of the road against which complaint is made; and the rates so determined by the board to be reasonable shall be by the railroad company affected thereby accepted, and posted up in a conspicuous place in each depot on the line of its road that may be designated by said board; and such rates so found shall, in all actions arising in any court in the state, be taken to be reasonable compensation for the services for which they are provided, until the contrary is proven; and all compensation demanded or received by any such railroad company in excess of the rates so determined by the board shall in any such action be taken to be unjust, unreasonable, and extortionate, until the contrary is proved. All cases of a failure to comply with a recommendation of the board of commissioners shall be embodied in the report of the board of commissioners to the governor, and the same shall apply to any unjust discrimination, extortion, or overcharge by said company, or any other violation of this act by such company: Kan. 23,181.

It shall be the duty of said railroad commissioners to see that such schedules of joint rates, fares, and charges are reasonable and just, and that such schedules of joint rates, fares, and charges shall be observed by all the common carriers who are parties to the same: Mo. 2641.

Said railroad commissioners shall have power to classify all articles of freight transported on any railroads: Mo. 2684; Tex. 1891,51,3. Except the articles in the special classes D, E, G, and H, placing said articles in either of the general classes herein provided for, or in any of said special classes except D, E, G, and H; and are further empowered and authorized to reduce said rates on any of said railroads or parts of railroads, either in general or special classes, whenever in their judgment it can be equitably done: Mo.

Any individual, company, or corporation owning, operating, managing, or leasing any railroad or part of any railroad in this state shall be bound by the decision of the aforesaid commissioners with reference to the rates so fixed by said commissioners, and every violation by any individual, company, or corporation charging a greater or higher rate, shall be deemed a misdemeanor: Mo. 2686.

It is hereby made the duty of the railroad commissioners to exercise constant diligence in informing themselves of the rates and charges of common carriers engaged in the transportation of freight from points in this state to points beyond its limits, and from points in other states to points in this state; and whenever it shall come to the knowledge of the railroad commissioners, by complaint made to them or in any other manner, that the rates charged by any such common carrier on interstate business are unjust, excessive, or unreasonable, or that such rates discriminate against the citizens of this state, the commissioners shall cause the facts thereof to be embodied in a complaint setting forth, in detail, the respect in which the rate complained of is unjust, excessive, or unreasonable, and shall file said complaint with the interstate commerce commission and demand a hearing thereof, and shall thereafter furnish testimony

in support thereof, and diligently present the facts upon which such complaint is based. At the time of filing such complaint, the railroad commissioners shall give notice thereof to the attorney-general, who shall prosecute the same to final determination before the said interstate commerce commission : Mo. 1891, p. 83.

The rates charged by any such company may be reduced by the board of railroad commissioners of this state whenever it appears that the net annual profits of such company exceed ten per centum of the amount of its capital actually invested. But such rates shall not be reduced so as to reduce the net annual profits of such company below ten per centum of the amount of its capital actually invested : Ark. 5498.

Whenever said board, in the discharge of its duties, shall establish or adopt rates of charges for the transportation of passengers or freight, pursuant to the provisions of the constitution, said board shall serve a printed schedule of such rates, upon the person, copartnership, company, or corporation affected thereby ; and upon such service, it shall be the duty of such company to immediately cause copies of the same to be posted in all its offices. The rates of charges established or adopted by said board, pursuant to the constitution and this act, shall go into force and effect on the twentieth day after service of said schedule : Cal. 1880,43,11 ; Tex. 1891,51,8.

The power and authority is hereby vested in the railroad commission of Texas, and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to enforce the same by having the penalties inflicted as by this act prescribed through proper courts having jurisdiction : Tex. 1891,51,3.

Before any rates shall be established under this act, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed ; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done ; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases : Tex. 1891,51,4.

In all actions between private parties and railway companies brought under the law, the rates, charges, orders, rules, regulations, and classifications prescribed by said commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 hereof : Tex. 1891,51,5. (See below.)

If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act, or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court, at either of its terms, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending : provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. In all trials under the foregoing section the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them : Tex. 1891,51,6-7.

The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this act. The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads: Tex. 1891,51,3(c).

The commission may adopt and enforce such rules, regulations, and modes or procedure as it may deem proper to hear and determine complaints that may be made against the classifications, or the rates, the rules, regulations, and determinations of the commission: Tex. 1891,51,3(i).

The commission shall make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays: Tex. 1891,51,3(j).

The commission shall make and establish reasonable rates for the transportation of passengers over each or all of the railroads subject hereto, which rates shall not exceed the rates fixed by law. The commission shall have power to prescribe reasonable rates, tolls, or charges for all other services performed by any railroad subject hereto: Tex. 1891,51,3(k).

Any common carrier subject to the provisions of this act may appeal to any district court of this state from any order made by said commissioners regulating or fixing its tariffs of rates, fares, charges, or classifications, or from any other order made by said commissioners under the provisions of this act. Either party may appeal from the decision of the district court to the supreme court: Minn. 1891; N.D. 1890,122,8h.

**The commissioners** shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discrimination in the transportation of freight and passengers, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and from misleading or deceiving the public in any manner as to the real rates charged for freights; and said commissioners shall have full power, by rules and regulations, to designate and fix the rates of charges for freight rates to be allowed for longer and shorter distances on the same or different railroads, and to fix what shall be the limit of longer and shorter distances: S.C. 1888,27,2; Ga. 719(c). *Provided*, said commissioners shall fix no rate which violates section 1443 [§ 8838]: S.C.

If the railroad commissioners shall at any time believe that any rate or rates is or are in any respect in violation of the laws against discrimination or unjust rates, it shall be their duty to submit such alterations as they deem necessary, whereupon a hearing shall be had before the said commissioners upon the changes or modifications so submitted by them, in the same manner, under the same provisions, and with the same right of appeal as is prescribed for the hearings hereinbefore provided for: S.C. 1883,325,3.

It shall be the duty of the attorney-general to represent the commissioners in all litigation, and to appear in favor of all changes or modifications proposed by them, when called on by them so to do: S.C. 1883,325,3.

Railroads must forward to the commissioners for their scrutiny and revision, immediately upon adoption, a copy of schedules adopted under these provisions: S.C. 1883,325,3.

The said commissioners, on the receipt of such schedules, contracts, or agreements, shall forthwith examine the same, that it may be seen whether or not they are in any particular a violation of any of the provisions of law intended to prevent discrimination and to secure to all persons just and reasonable rates of charge for the transportation of passengers or freight of any description; and the said commissioners shall, if they deem such schedule, contract, and agreements to be in any respect a violation of the law aforesaid, before directing any changes or modifications in any schedules, contracts, or



agreements, notify the parties forwarding the same of the time and place when and where a hearing can be had. If the said commissioners shall find the said schedule, contract, or agreement is either in whole or in part in violation of law, they shall cause due notice of such finding to be given forthwith to the persons forwarding the same, together with a statement of such changes or modifications as they find necessary to make in such schedules, contracts, or agreements; and, as thus changed or amended, they shall be adopted, enforced, and posted in lieu of the schedules, contracts, and agreements as originally submitted: S.C. 1883,325,3.

The persons so submitting such schedules, contracts, or agreements shall have the right of appeal from such findings of the commissioners to the resident judge of the circuit of which Richland County forms a part: S.C. 1883,325,3.

It shall be the duty of the commissioners to recommend to the general assembly, at each session thereof, such legislation as in their judgment is necessary to secure just and reasonable rates for the transportation of passengers and freight, and for the prevention of unjust discrimination: S.C. 1883,325,5.

The commissioners have the power to make just and reasonable joint rates for all connecting railroads doing business in this state, as to all traffic or business passing from one of said roads to another; and to require the location of such depots, and the establishment of such freight and passenger buildings, as the condition of the road, the safety of freight, and the public comfort may require: Ga. 1889, p. 131.

It is the duty of the railroad commissioners to consider and carefully revise all tariffs of charges for transportation made by any person or corporation owning or operating a railroad in this state; and if in their judgment any such charge is more than just compensation for the service for which it is proposed to be made, or amounts to unjust discrimination against any person, locality, or corporation, they shall notify the party making the same of the changes necessary to reduce the rate to just compensation, or so as to avoid unjust discrimination, and when such changes are made, or when none are deemed proper and expedient, they shall append to the tariff of charges a certificate of their approval; and they shall exercise a watchful and careful supervision over all tariffs and their operation, and revise the same from time to time as justice to the public and the railroads may require, and increase or reduce any of the rates as experience and business operations may show to be just; but in revising any tariff the commissioners shall take into consideration the nature of the service to be performed, the entire business of the railroad, and its earnings from passengers and other traffic, and so revise the same as to allow a fair and just return on the value of the railroad, its appurtenances, and equipments: Ala. 1130.

When any change is contemplated to be made in the schedule of passenger or freight rates of any railroad by the commission, said commission shall give the person or corporation operating or managing said railroad notice in writing at least ten days before such change of the time and place at which such change will be considered: Miss. 1884,23,6.

It is the duty of the commission to hear all complaints made by any person against the tariff of rates on the ground that it is for more than just compensation, or that any charge amounts to an unjust discrimination. If there appears to them reasonable ground, they give the railroad a copy of the complaint with notice of hearing, and thereupon (1) may make any changes deemed proper by them in such rates: Miss. 1884,23,9; Ala. 1131.

(2) Incorporate their findings in their report (§ 8578): Ariz. 1891,89,7.

When any line of railroad consists of two or more railroads under one general management, or when there are connecting lines of railroad, such commissioners shall recommend joint local rates of freight, so as to avoid as far as possible the injustice of combined local rates in the transportation of freight over such line or lines; but in making any such recommendation, they shall have due regard for the value of the

services to be performed, and the rules and principles governing such transportation, and shall not in any instance make any recommendation which does not allow the persons or corporations operating such lines a fair and reasonable compensation for the services to be performed : Ala. 1132.

A railroad within this state, within thirty days after the passage of this act, is to furnish the commissioner with its tariff of charges for transportation of every kind to points within or without the state, and it shall be the duty of said commission to revise said tariff of charges so furnished, and determine whether or not, and in what particular, if any, said charges are more than just compensation for the services to be rendered, and whether or not unjust discrimination is made in such tariff of charges against any person, locality, or corporation, and when said charges are corrected as approved by said commission, the commission shall then append a certificate of its approval to said tariff of charges ; but in revising or establishing any and every tariff of charges, it shall be the duty of said commission to take into consideration the character and nature of the service to be performed, and the entire business of such railroad, together with its earnings from the passenger and other traffic, and shall so revise such tariffs as to allow a fair and reasonable compensation for the services rendered ; and it shall be the duty of said commission to exercise a watchful and careful supervision over every such tariff of charges, and to continue such tariff of charges from time to time as justice to the public and each of said railroad companies may require, and to increase or reduce any of said rates according as experience and business operations may show to be just : Ore. 1891, p. 124 ; Miss. 1884,23,6 ; 1888,26.

§ 8834. **Remedies (A) Penalties on Railroad.** It is provided that, if any railroad shall charge, collect, demand, or receive more than a fair and reasonable rate for the transportation of passengers, freight, or railroad cars upon its track, it shall be deemed guilty of extortion : Ill. 114,124 ; Wis. 1798 ; Io. 1878,77,12 ; 1888,28, 2 & 23 ; W.Va. 54,82c(VI) ; Ky. 90a,VI,1 ; 1890,305 ; Col. 1885, p. 310,8 ; Ga. 719(c) ; Ala. 1159 ; Miss. 1884,23,1.

So for any breach of the law concerning rates, etc. (§§ 8830-8839) : Ill., Wis., Io., Col., Mon. G. L. 700.

It is "unlawful" to charge more than the posted or schedule rates (§ 8832a) : S.C. 1444,1883,325,2.

Or more than is specified in the bill of lading : Ala., Miss.

Such overcharge or discrimination (see § 8837) to be determined by a jury : Ala.

The person or corporation offended in such extortion, etc., may recover triple damages, with cost of suit and attorney's fee : Ill. 114,129 ; Wis. 1798 ; Io. 1878,77,13 ; 1888,28,9 ; Col. 1885, p. 310,9 ; N.M. 2738.

Double damages : Ore. 1891, p. 128 ; Ala. 1159 ; Miss. 1884,23,2. "Damages," simply : N.M. See § 8573.

Fifty dollars : N.Y. 1890,565,39.

One hundred dollars penalty, half to prosecutor : N.J. R.Rs. 38 & 154 ; La. 1890,54.

Five hundred dollars : W.Va. 54,82c(V) ; Tex. 4258 ; N.M. 2722.

One thousand dollars : Mo. 2663 ; Ark. 1887,80,12.

The penalty for extortion is a fine of from one thousand dollars to five thousand dollars for the first offence ; five thousand dollars to ten thousand dollars for the second : Ill. 114,127 ; Io. 1888,28,26-7 ; ten thousand dollars to twenty thousand dollars for the third ; and twenty-five thousand dollars thereafter ; provided that either party shall have the right of trial by jury : Ill.

And the person or corporation committing it is also guilty of a misdemeanor : W.Va. 54,82cXVa, I, Ore. 4036 ; Mon. ; Miss. 1884,23,3 ; U.S.<sup>c</sup> 1887,104,10 ; 1889,382. Is liable to a penalty of a thousand dollars : N.H.<sup>c</sup> 160,2 ; W.Va. ib. (XIV) ; Ark. Five hundred dollars : N.H.<sup>c</sup> 160,20 ; Miss. 1884,23,23 ; N.M.

One hundred to five thousand dollars: Ky. 1890,305,5; Tex. 1890,51,14. Twenty-five hundred to ten thousand dollars: N.D. 1890,122,12. Five thousand dollars: U.S.<sup>a</sup>

And, if the offence is a discrimination, such person is liable to two years' imprisonment: U.S. 1889,382,2.

And the railway to forfeiture of its franchise: W.Va. ib. (XV).

If any railroad does anything prohibited or omits anything required by this act, it is liable for three times the amount of damages sustained, and attorney's fees: Wis. 1798, Io. 1888,22,9, Kan. 23,186; Mo. 2643; Ore. 4035; S.C. 1539.

For the full amount of damages only, with attorney's fees: N.H.<sup>ac</sup>, Neb. 1887, 60,9; U.S. 1887,104,8.

Any such railroad or any of its officers or agents so doing or neglecting to do anything required by this act is liable to a penalty of five thousand dollars: Io. 1888,22,11; Kan. 23,187, Mo. 2645.

If a railroad refuse to receive and transport any personal property, or deliver the same within a reasonable time at a regular and appointed time and place, or to keep their depots open, lighted, and warm, they are liable in triple damages: Ill. 114,85.

That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or, any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall wilfully suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done, not to be so done, or shall aid or abet therein any such omission, or shall be guilty of any wilful infraction of this act, or shall aid or abet therein, shall be deemed guilty of a violation of the provisions of this act, and shall, upon conviction thereof in any district court of the state within the jurisdiction of which such offence was committed, be subject to a penalty of not less than two thousand five hundred dollars or more than five thousand dollars for the first offence, and not less than five thousand dollars or more than ten thousand dollars for each subsequent offence: Minn. 515.

And a similar general statute exists in Mon. G. L. 700.

The injured party shall be entitled to recover three times the amount taken or demanded in excess of the rates prescribed by this article: Mo. 2686.

And in case of the transportation of property shall, in addition, pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation; provided that in all suits against such corporation under this section the burden of proof shall be on such corporations to show that the delay was not negligent: Tex. 4227.

Any railroad corporation, or other chartered company, acting as common carriers within the limits of this state, which shall for itself, or for itself and other chartered companies acting in combination with it, charge or receive any sum which is unreasonable within the meaning of this chapter, shall forfeit and pay to the person, company, or corporation paying such overcharge twice the amount so charged in excess of reasonable rates, to be recovered by action in the proper courts of this state; provided, that the action be commenced within one year from the accrual of the right of action: S.C. 1336.

**(B) Penalties on Officers.** Any director or officer doing or permitting anything prohibited by this act (or any act, Nev.), or omitting to do anything

required, or guilty of any infraction or aiding or abetting therein, is guilty of a misdemeanor; penalty, five thousand dollars. Ore. 4036.

Two thousand dollars: Nev. 4745.

Not less than two hundred dollars. S.C. 1540.

And so of the company itself: Nev., Mon. See also (A) above.

Any person doing or omitting anything prohibited or required by this act, or guilty of any violation of these provisions, is liable to any person sustaining damage thereby in treble damages: Ore. 4035; Nev. 900; S.C. 1539.

Besides a penalty of at least two thousand dollars: Nev.

And an injunction may be granted: Nev., S.C.

Agents or officers of railroads evading these rates of transportation are subject to a fine, and declared guilty of a misdemeanor: Mo. 2676; S.C.: Fla. 80,12.

And the injured party has a right of action against the agent or railroad, or both, for treble the amount taken from in excess of the rate: Mo., S.C.

If any collector receive for tolls more than is lawful, the company or person in whose service he is as such collector shall pay to the party aggrieved thereby the amount unlawfully received, and ten dollars besides: Va. 1228.

Directors, officers, receivers, employees, etc. of any railroad, who directly or indirectly do or suffer anything in this act forbidden, or fail to do any act required, are declared guilty of misdemeanor, subject to a penalty of not less than two thousand dollars: Nev. 901.

**(C) Procedure.** These fines shall be recovered by action of debt in the name of the people; and the preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for them. Ill. 114,128.

If any person is or shall be aggrieved, by any company incorporated by the laws of this state with authority to transport or carry persons or property for hire, by reason of anything done or omitted to be done by the said company in violation or contravention of its duty in regard to the transportation or carriage of property or persons as aforesaid, it shall and may be lawful for such person to apply by petition in a summary way to the circuit court for the county or superior court of the city of Baltimore, and, on hearing, the said court shall pass such order for relieving the said petitioner or otherwise as to justice shall appertain; and either party may appeal from the final order to be passed by the said court, or any order determining the merits of the said application, or any part thereof, to the court of appeals: Md. 23,185.

Any person or persons claiming to be damaged by any common carrier by reason of any violation of the provisions of this act may bring suit therefor, and such person or persons may make complaint as hereinafter provided to the railroad commissioners: Mo. 2644.

Each day the same is done shall constitute a separate cause of action, but all such actions shall be brought within one year after the cause of action accrues, or within one year after the party complaining comes to the knowledge of his or her rights, and no such action shall be maintained unless it is alleged and shown that before bringing his action the party complaining brought the matter to the attention of the railroad company by a notice or statement of the facts in writing, accompanied by the papers showing such violation, if any he has, and a demand for reparation: Ark. 1887,81,12.

It is made the special duty of the attorney-general, whenever information is filed with him by the state engineer or any other person that any railroad company in this state has violated any provisions of the laws of this state providing for the transportation of passengers or freight, or is unjustly discriminating in its charges for transportation against any person or place in this state, or is guilty of extortion in its charges for transportation against any persons or place in this state, or is guilty of extortion in its charges for transportation of passengers and freight, or for improper

condition of road-bed, track, bridges, or other structures, cars, station-houses, or platforms, to give ten days' notice in writing to said corporation of said complaint, and after an investigation of the matter he shall proceed to determine whether the matters complained of are violations of the law, and shall give notice to said company of his decision respecting the same, and if any such violation of the law is continued after the railroad company is so notified, or if the actual damage is not paid to the party aggrieved within ten days after such notification, he shall cause proceedings to be instituted against said railroad company or companies to recover the penalties provided by law ; provided, that nothing herein contained shall be construed to prevent any citizen of this state from bringing suit in his own name against any railroad or transportation company for discrimination in freight or passenger charges ; provided further, that the penalties prescribed by law for any overcharge shall not be recoverable unless the party aggrieved shall give notice thereof in writing to the railway company, or to the agent demanding or receiving the same, and said company shall fail within twenty days thereafter to refund to such party aggrieved the amount of such overcharge : Tex. 4258b,10.

In case any railroad subject to this act shall do, cause to be done, or permit to be done any matter, act, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm, or corporation injured thereby for the damages sustained in consequence of such violation ; and in case said railroad company shall be guilty of extortion or discrimination as by this act defined, then, in addition to such damages, such railroad shall pay to the person, firm, or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run ; provided, that such road may plead and prove as a defence to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact ; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation : Tex. 1891,51,17.

If any railroad, as aforesaid, shall wilfully violate any other provisions of this act, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not herein been provided, for every such act of violation it shall pay the state of Texas a penalty of not more than five thousand dollars : Tex. 1891,51,18.

Each and every violation of the foregoing provisions of this act by any corporation operating or transacting business in this territory, shall render the corporation so offending liable to the party or parties aggrieved in treble damages, which shall be finally computed as follows : that is to say, the jury, or in equity cases the court, shall in the first instance determine the amount of compensatory and exemplary damages, according to the proofs, and thereafter the clerk of the proper court shall insert as the damages recovered treble the amount so determined by the jury or court, and each and all of the foregoing provisions shall also be enforceable specially in equity by the territory, or by any party or parties aggrieved : and provided further, that for each and every violation of the foregoing provisions, or of any thereof, the corporation so offending shall be also liable to a penalty of five hundred dollars, recoverable in the name of the territory ; one half of the penalty recovered in such action shall be paid to the informer : N.M. 2738.

Any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the commission, as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction ; but such person

or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages, the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding: U.S. 1887,104,9.

The circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm or corporation, alleging such violation by a common carrier of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ. Provided, that if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: provided, that the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement: U.S. 1889,382,10.

In cases under this act the rules of evidence shall be the same as in other civil actions, except as hereinbefore otherwise provided: Ill. 114,132; Tex. 1891,51,19. Compare §§ 8573, 8576.

In any such action brought in the district court for the recovery of damages, said court may compel any director, officer, receiver, trustee, or agent of the corporation or company, defendant in such suit, to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company, party to any such suit. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding: Neb. 1887,60,10; Ark. 1887,80,8; N.D. 1890,122,11.

Upon any hearing by any court of any matter involving the reasonableness or unreasonableness of the rates charged or proposed to be charged by any such common carrier in its schedule or schedules of rates, the court shall make a finding as to what, in its opinion, is a reasonable and just rate of charge to be made by such common carrier, and shall thereupon enter judgment in accordance with such finding, and make orders enforcing the same: Mo. 2654.

Any finding and judgment made by courts under this act may be reviewed or modified upon the application of any common carrier or the railroad commissioners at any time: Mo. 2655.

In such suit, the fact that the rates or terms, in respect to which the extortion is alleged, had been previously approved by the railroad commissioners, is *prima facie* evidence that the same were not extortionate; nor shall any rate or charge for the transportation of freight over any railroad be held or considered extortionate or excessive, if, in the absence of any unjust discrimination, it appears from the evidence that the net earnings of such railroad for transporting freights, on the basis of such rate or charge,

together with the net earnings thereof from its passengers and other traffic, does not amount to more than a fair and just return on the value of such railroad, its appurtenances and equipments : Ala. 1160.

Provided, that no action for damages shall be sustained for extortion, or penalty inflicted for a violation of this act, against any person or corporation who has previously submitted its passenger rates and schedule of freight charges to the railroad commission hereinafter established, and which has been approved by said commission and complied with by said railroad company : Miss. 1884,23,3.

Every railroad is required to keep an agent in the principal city along its line, who shall be authorized to settle all claims for overcharge and for all loss or damage : Col. 2799.

All overcharges and claims for loss or damage shall be paid by such representative within sixty days after presentment, on penalty of one hundred dollars per month for delay : Col. 2800.

So, within thirty days ; or the railroad is liable for damages as below : Ore. 1891, p. 128,8 ; Ga. 719(i).

Such actions for damages or penalties under this section must be brought within two years : N.H.<sup>c</sup>

NOTES. — <sup>a</sup> Applies to any branch of §§ 8830-8832a. <sup>b</sup> Of § 8838. <sup>c</sup> Of § 8837.

**§ 8835. Extra Charges.** It shall not be lawful for any railroad company, or any agent or employee of any railroad company, to charge or collect from any person or persons elevator charges, or any charges whatever for handling wheat, or for the use of any elevator, in any case where grain is shipped on such road without being placed in or passed through such elevator ; nor shall any company, or any agent or employee thereof, make any distinction whatever in charges against any person or persons shipping grain from private warehouses, or handling grain otherwise than in or through elevators belonging to any railroad company : Minn. 2568.

No additional premium or compensation may be demanded by the railroad or express company by way of premium for insurance or otherwise : Va. 1215.

It shall not be lawful for any railroad company, or its agent, to charge or receive any fee or commissions other than the regular transportation fees, storage, and other charges authorized by law, for manifesting, receiving, or shipping any goods or other articles for transportation on such railroad : Va. 1203 ; W.Va. 54,82c(X).

Extra fees may be charged for receiving or delivering goods between the regular depots : Va. 1203.

**Sleeping Cars.** Railroads may run sleeping or parlor cars, and collect extra fare therefor, provided a sufficient number of first-class passenger cars be run upon the same train for persons who prefer to travel therein : N.J. R.Rs. 4, Suppl. R.Rs. 81 ; Mich. 3414-5.

Patentees of sleeping cars are allowed to charge each passenger forty cents for the use of a berth for one hundred miles, and three mills for every additional mile ; but in no case over eighty cents, and no railroad company can be interested in the additional sum so paid ; but nothing in this act shall exonerate the railroad from liability for injuries to the same extent as if the cars had been owned and provided by them ; and railroads using such sleeping cars must nevertheless keep sufficient first-class cars of other kinds : N.Y. 1899,565,41.

**§ 8836. Limited Tickets and Passes, Extra Fare, etc.** No railroad company shall limit the right of a ticket holder to any given train, but such ticket holder may travel on any train, whether regular or express, and may stop at any of the stations along the line of the road at which such trains stop ; and such ticket shall be good for a passage as above for six years from the day it was first used : Me. 51,44 ; provided,

that railroad companies may sell excursion, return, or other special tickets at less than the regular rates of fare, to be used only as provided on the ticket : Me. ; Col. 1885, p. 310,7 ; Io. 1888,28,29 ;

But the railroad may establish rules for the cancellation of tickets and exchange for tickets partially used, if publicly posted : Me. 51,45.

A railroad corporation may make contracts for the conveyance of passengers upon designated trains for a specific distance at fixed times, at such reduced rates of fare as the parties may agree upon. Tickets may be issued for such passengers, upon which shall be plainly printed the terms upon which they may be used. Such tickets shall not (in Mass.) be transferable without the consent of the corporation, nor entitle the holder to ride upon a train not therein designated : Mass. 112,181 ; Mich. 3416.

Railroads may sell tickets at less than ordinary rates, if limited to a certain time stated upon the ticket : N.J. Suppl. R.Rs. 38 ; Col. 1885, p. 310,7.

Season and mileage tickets may be sold at reduced rates ; and special rates may be established for passengers to attend agricultural fairs, public meetings, and parties of pleasure, and for military and other organized companies : N.H. 160,4.

**Season Tickets, etc.** Nothing in this act shall be so construed as to prevent any person or corporation operating a railroad in this state from issuing, or selling at reduced rates, immigrant, excursion, or commutation tickets, or from carrying free, or at reduced rates, any property for schools, churches, fairs, exhibitions, or charitable institutions, or for the state, or the United States, or any of the United States : Io. 1888,28,29 ; Minn. 507 ; Neb. 1887,60,21 ; N.C. 1887,187,5 ; Ky. 90a,VI,3 ; Mo. 2630,2637 ; Ark. 1887,81,1 & 5 ; Tex. 1891,51,15 ; Nev. 902 ; N.D. 1890,122,1 ; S.C. 1546 ; 1883,325,7 ; Miss. 1884,23,8 ; U.S. 1887,104,22.

Or from transporting at lower rates materials or supplies for the construction of other railways : Nev.

Or immigrants, or "persons prospecting with a view to locating or bringing them into the state." Miss.

Or ministers of the gospel : Neb., N.D.

Or pleasure excursions : Miss.

Or second-class tickets for which "second-class accommodation" is furnished : S.C. 1888,27,4.

So mileage tickets may be sold : Vt. 1888,36,4 ; Io., Minn., Ky., N.C., Tex., U.S.

Passes : Io., N.D.

Transportation to stock shippers in cars : Minn.

All railroads shall at all times keep for sale mileage tickets in the form of coupon-books, which shall contain not more than one thousand coupons ; and the conductors on the trains shall detach from such coupon book one coupon for each mile travelled : Vt. 1888,24.

Such coupon-book shall be good to all the members of a firm or family : Vt. 1888,24.

Provided, further, that one-thousand-mile tickets shall be kept for sale at the principal ticket offices of all railroad companies in this state, or carrying on business partly within and partly without the limits of this state, at a price not exceeding twenty dollars in the Lower Peninsula and twenty-five dollars in the Upper Peninsula. Such one-thousand-mile tickets may be made non-transferable, but whenever required by the purchaser, they shall be issued in the names of the purchaser, his wife and children, designating the name of each on such ticket, and in case such ticket is presented by any other than the person or persons named thereon, the conductor may take it up and collect fare, and thereupon such one-thousand-mile ticket shall be forfeited to the railroad company. Each one-thousand-mile ticket shall be valid for two years only after date of purchase, and, in case it is not wholly used within the time, the company issuing the



same shall redeem the unused portion thereof, if presented by the purchaser for redemption within thirty days after the expiration of such time, and shall on such redemption be entitled to charge three cents per mile for the portion thereof used : Mich. 3323 ; 1891,60.

Special rates, if so published, may be given to any person or corporation to aid in the development of any industrial enterprise in this state : Ala. 1161.

The railroad commissioners may in their discretion exempt any railroad from the provisions of this act : Vt. 1888,24.

**Labor Trains.** Every railroad corporation whose railroad runs out from Boston shall furnish on each week-day a morning train in and an evening train out for distances not exceeding fifteen miles, or suitable cars attached to other trains, and reaching and leaving Boston at about six o'clock in the forenoon and afternoon, or at such hours as may be fixed by the board ; and for such trains shall furnish yearly season tickets at a rate not exceeding three dollars per mile per year good once a day each way for six days in a week, and quarterly tickets not exceeding one dollar per quarter-mile : provided, that two hundred or more persons make application therefor : Mass. 112,183.

**Free Passes,** except to officers or employees of a railroad, are forbidden : Pa. R.Rs. 110 ; Io. 1888,28,29 ; Neb. 1887,60,21.

But passes may be granted for a valuable consideration under contracts made between the corporation and individuals or another corporation : Pa., Neb.

So, free passes are forbidden to any officer of the state, legislative, executive, or judicial : Ark. 1887,22 ; Miss. 1884,27 ; Mon. G. L. 700 ; Fla. 1887,3741.

"Nothing in this code shall be so construed as to prevent any person or corporation owning or operating a railroad from transporting freight or passengers free of charge." Ala. 1162 ; Miss. 1884,23,8.

No person shall be allowed to pass over any railroad without paying the fare thus established, except stockholders going or returning from the meetings of the proprietors : the directors, superintendent, treasurer, and clerk of said proprietors, and of roads having a connection with said road ; persons in charge of mails and expresses ; and persons poor and in misfortune who are unable to pay said fare, and to whom passes have been granted : N.H. 160,5.

In Connecticut members of the legislature are furnished transportation tickets to and from their homes during the session by the comptroller upon assigning to the state their mileage allowance for the session in payment therefor ; and the comptroller is authorized to pay for the tickets so procured such sums as may reasonably be charged therefor by the railroads : Ct. 1889,198.

That the governor, the chancellor, vice-chancellor, the justices of the supreme court, and the judges of the court of errors of this state, secretary of state, state treasurer, comptroller of the treasury, clerk in chancery, clerk of the supreme court, adjutant general, quartermaster general, state librarian, state prison keeper, and superintendent of public schools of New Jersey, while travelling for the purpose of discharging the duties of their offices, and the members and officers of both houses of the legislature of this state shall pass and repass free of charge on the railroad of any company incorporated under this act : N.J. R.Rs. 125.

Nothing herein shall prevent railroads from giving free transportation to ministers of religion, or free transportation to the inmates of hospitals, eleemosynary and charitable institutions, and to the employees of the agricultural and geological departments of this state, or to peace officers of this state ; and nothing herein shall be construed to prevent railroads from giving free transportation to any railroad officers, agents, employees, attorneys, stockholders, or directors, or to the railroad commissioners, their secretary, clerks, and employees herein provided for, or to any person not prohibited by law : provided they, or either of them, shall not receive from the state mileage when such pass is used : Tex. 1891,51,15(h).

§ 8837. **Discrimination.** (For connecting roads, see § 8724.) Every railroad corporation shall give to all persons or companies reasonable and equal terms, facilities, and accommodations for the transportation of themselves (their agents and servants, except in Neb., N.H.), and of any merchandise and other property upon its railroad, and for the use of its depot and other buildings and grounds; and, at any point where its railroad connects with another railroad, reasonable and equal terms and facilities of interchange: N.H. 160,1; Mass. 112,188; Vt. 1882,36; N.Y. 1890,565,34; Mich. 3355 amt.; Minn. 508; Neb. 1,72,5,1.

So, "the charges for transportation, on each class or kind of freight moving in the same direction, shall be uniform." Tex. 4257,4258,b,7.

"No unjust discrimination in the freight rates shall be made against any person or place." Tex. 4257.

A breach of this section, or §§ 8830-8832, is declared to be "extortion" (see § 8834): Ky. 90a,VI,4; Ga. 719(d); Ala. 1159; Miss. 1884,23,1.

Also if it make any unjust discrimination in its rates for the transportation of passenger, freight, or railroad cars, it is ("extortion," see § 8834) forbidden: Ill. 114,145; N.C. 1887,42,3; Ga. 1719(d); Ala.

Also if it charge, collect, or receive at any point a higher rate of toll for receiving, handling, or delivering freight of the same class and quantity than it shall at the same time charge at any other point, it is extortion: Ill.

Any undue or unreasonable discrimination by any railroad company, or other common carrier, in charges for or in facilities for the transportation of freight within this state (or coming from or going to any other state, Pa.), is hereby declared to be unlawful: Pa. R.Rs. 151; Ark. 1887,81,1.

Railways shall furnish, without discrimination, the same facilities for carriage, receiving, delivering, storage, and handling all property of like character carried by them, and shall perform with equal expedition the same kind of services connected with contemporaneous transportation thereof as aforesaid: O. 1891, p. 429,2; Ore. 4029; Nev. 894. S.C. 1440.

Any person or persons, having purchased a ticket for passage on any railroad or railroads in this state, or paid the required fare, shall receive the same treatment, and be afforded equal facilities and accommodations as are furnished all other persons holding a ticket of the same class, without discrimination: Ore. 4029; Miss. 1888,26,3.

So, no discrimination of any kind shall be made against the holder of any passenger ticket: Col. 1885, p. 310,7. And compare § 8850.

No railroad company or canal company, or other common carrier chartered by or doing business in this state, shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company (or locality, Io., Minn., Neb., Ky., Mo., Tex., N.D., Ala., U.S.), or any particular description of traffic, in any respect whatever; nor shall any such company or other common carrier subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: Mass. 1882,225; Io. 1888,28,4; Minn. 508; Neb. 1887,60,3; Va. 1208; Ky. 1890,305,3; Mo. 2636; Tex. 1891,51,15; N.D. 1890, 122,2; Ala. 1159; U.S. 1887,104,3.

No railroad company or other common carrier, engaged in the transportation of property, shall charge, demand, or receive from any person, company, or corporation, for the transportation of property, or for any other service, a greater sum than it shall charge or receive from any other person, company, or corporation for a like service from the same place, upon like conditions and under similar circumstances: Pa. R.Rs. 152; Wis. 1798; Io. 1878,77,11; 1888,28,3; Minn. 511;

Kan. 23,177 ; Neb. 1887,60,2 ; Ky. 90a,VI,2 ; Mo. 2632 ; Col. 1885, p. 309,7 ; N.D. 1890,122,5 ; S.C. 1335 ; N.M. 2731 ; Ariz. 1891,89,6. And all concessions in rates and drawbacks shall be allowed to all persons, companies, or corporations alike for such transportations and service upon like conditions, under similar circumstances, and during the same period of time : Pa., Io., Kan., Ky. 1890,305, Col., N.D., S.C., N.M.

Nor shall any such railroad company or common carrier make any undue or unreasonable discrimination between individuals, or between individuals and transportation companies, in the furnishing of facilities for transportation. Any violation of this provision shall make the offending company or common carrier liable to the party injured for damages treble the amount of injury suffered : Pa. R.Rs. 152.

Provided, however, that nothing herein shall be construed to prevent any common carrier from giving preference as to time of shipment of live stock, uncured meats, or other perishable property : Io.

It may not charge, collect, or receive more for one car than for several cars of a like class of freight for the same distance and direction : Io. 1888,28,25 ; Mo. 2633 ; N.D. 1890,122,2.

Or for a ton of freight more than for several tons of like freight in the same way ; or for a hundred pounds or for several hundred pounds of freight under a ton in the same manner, whether directly or indirectly by rebates or drawbacks ; provided that special rates may be granted any new industry with the approval of the railroad commissioners : Io., Mo.

It is "extortion" to collect or receive at any point upon its railroad a higher rate of toll or compensation for receiving, handling, or delivering freight of the same class and quantity, than it shall at the same time charge, collect, or receive at any other point upon the same railroad : Ill. 114,147 ; Io. 1888,28,24 ; Kan. 84,113 ; Mo. 2629 ; S.C. 1442.

Provided, however, that nothing herein contained shall be so construed as to prevent railroad corporations from issuing commutation, excursion, or thousand-mile tickets : Ill., Io., S.C. See § 8836.

Or second-class tickets, with second-class accommodations : S.C.

Also, if it charge, collect, or receive from any person a greater compensation than it shall at the same time charge, collect, or receive from any other person for receiving, handling, or delivering freight of the same class and like quantity at the same point, or for transportation of a like quantity of freight of the same class from the same point in the same direction over equal distances of the same railroad, or for the use and transportation of railroad cars of the same class or number for a like purpose, all such discriminating rates, charges, collections, or receipts, whether made directly or by means of any rebate, drawback, or other shift or evasion, shall be taken against such railroad as *prima facie* evidence of the unjust discriminations hereby prohibited : Ill. ; Io. 1888,128,24 ; Tex. 4258b,7 ; S.C. 1442.

And the fact that said railway station or point where the less rates are taken is a competitive point with any other railroad or means of transportation shall not be deemed an excuse therefor : Ill., Io.

It may not charge to or receive from any person or persons any greater or less rate or amount of freight compensation or reward than is by him or them charged to or received from any other person or persons for like contemporaneous service in carrying, receiving, delivering, storing, or handling the same : Ore. 4029 ; Nev. 894 ; S.C. 1440.

It shall be unlawful for any person or persons engaged in the transportation of property as aforesaid, directly or indirectly, to allow any rebate, drawback, or

other advantage in any form, upon shipments made or services rendered as aforesaid by him or them : Minn. 511 ; Neb. 1,72,5,3 ; Ore. 4030 ; Nev. 895 ; S.C. 1441.

Provided that the provisions of this act shall not apply to goods intended in good faith to be shipped to points beyond the limits of this state ; provided, that this discrimination shall be considered only as between persons when relating to similar grades of freight : Ore.

If any common carrier subject to the provisions of this act shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater compensation for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited : Neb. 1887,60,2 ; Tex. 1891,51,15 ; U.S. 1887,104,2.

One car-load of freight of any kind or class shall be transported at as low a rate per ton, and per ton per mile, as any greater number of car-loads of the same kind and class from and to the same points of origination or destination : Minn. 508(a) ; N.D. 1890,122,2.

The rates shall be the same for all persons and for like descriptions of freight between the same points ; such prices shall not be raised until after thirty days' notice, posted as aforesaid : N.H. 160,3.

Any railroad company which shall refuse to transport over the line of its road any railroad ties, sleepers, or material to be used in the construction or repair of any other railroad, at the same rate or price as other freight of the same class, shall forfeit not less than fifty nor more than three hundred dollars, half to him who shall sue therefor, and half to the state : Ct. 3547.

Every railroad shall give to every station upon its line, when so requested in writing by twenty-five legal voters and freeholders of the town, city, or village in which such station is situated, the same and equal accommodations and facilities as to market days and market day rates of fare to and from such station, on any regular train upon the day of the week requested, as is given by such company or corporation to any station upon its line : Vt. 1888,17.

Every such corporation shall transport merchandise, wood, lumber, and other property, and persons from the various stations upon said road, without partiality or favor, when not otherwise directed by the owner of said property, and with all practicable despatch, and in the order in which such freight and property shall have been received : Mich. 3324.

No railroad corporation shall in any manner discriminate in its rates of freight tariff in favor of any individual, company, or corporation, doing business over its line (of) road, and shall grant the same rights and privileges to all shippers, subject to the same rates and classification, without rebate or any other special privilege or rate not extended to all other shippers in the same class, who ship a like quantity : Mich. 3355 amt.

It shall be unlawful for any railroad company doing business in this state, operating the shortest competing line of railroad, to charge a greater amount of toll or compensation for the transportation of freight from any non-competing point on its line of railroad than it shall charge at the nearest railroad competing point on its line of road in opposite direction to that from which such freight is moved, when of the same class, in like quantity, and for the same destination in this state. It is also hereby provided that wherever freight is taken from any point on the longer competing line or lines, that where the distance from such shipping point to the place of destination does not exceed

the entire length of the shortest competing line, then the same rule shall apply as is provided in this section for the shortest competing line as to rates of freight : Mich. 3422a.

But in so doing, an unjust preference, advantage, or monopoly shall not be given to any person, company, or corporation doing business at more than one station on the line of its railroad : Wis. 1828(9).

But the provisions of this section shall not be construed to permit railway companies, establishing joint rates, to make by such joint rates any unjust discrimination between the different shipping points or stations upon their respective lines between which joint rates are established : Io. 1890,17,1.

Whenever any railway company doing business in this state shall be unable, from any reasonable cause, to furnish cars at any railway station or side track, in accordance with the demands made by all persons demanding cars at such stations or side tracks for the shipment of grain or other freight, such cars as are furnished shall be divided as equally as may be among the applicants until each shipper shall have received at least one car, when the balance shall be divided ratably in proportion to the amount of daily receipts of grain or other freight to each shipper, or to the amount of grain offered at such station or side tracks : Minn. 513(b). See also § 8830(F).

When one or more car-loads of freight shall be transported at the same time for different persons, and for each shipper a car-load or more, such shipment shall be considered and taken as the same quantity of freight within the meaning of this act ; and when less than a car-load of freight, and over five thousand pounds, are transported at the same time for different shippers, and for each shipper over five thousand pounds, such shipments shall be taken and considered as the same quantity of freight ; and when over five hundred pounds and less than five thousand pounds are transported at the same time for different shippers, and for each shipper said quantity of freight, such shipments shall be considered and taken as the same quantity of freight : Ky. 1890, 305,3.

Nothing contained in this act shall be construed as controlling the rates of freight which come from and go beyond the boundaries of the state, nor as excluding other evidence of extortion or unlawful discrimination : Ky. 90a,VI,3.

No railway company, corporation, or association shall hereafter make any discrimination in charges or facilities in the transportation of freight or passengers between transportation companies and individuals, nor in the transportation of freight between commission merchants, or other persons engaged in the transportation of freight, and individuals, in favor of either by abatement, drawback, or otherwise, nor shall any such company, corporation, or association, nor any lessee, manager, or employee of any such company, corporation, or association make any preference between the parties aforesaid in furnishing cars or motive power for the purpose aforesaid : Mo. 2630 ; Ark. 1887,81,4.

It shall be unlawful for any such common carrier to charge, collect, demand, or receive more for the transportation of less than a car-load of freight when shipped to one owner, to one destination, than it at the same time charges for a car-load of like freight, or when the car is loaded with freight of several classes, more than it charges for a car-load of the highest class of freight shipped in said car of mixed freight : Mo. 2635.

All individuals, associations, and corporations shall have equal rights to have persons and property transported over railroads in this state : Ark. 1887,81,1.

No officer shall be interested in any arrangement which shall afford more advantageous terms or greater facilities than are offered or accorded to the public : Ark. 1887,81,3. See § 8540.

Nor shall any railroad charge or collect from a connecting railroad for transporting freight received from such connecting railroad to points on its line any greater rate of charge than such connecting road charges upon like freights originating at the point of junction to the same destination : Ark. 1887,81,4.

It shall be *prima facie* evidence of an unjust discrimination for any railroad company to demand or receive from one person, firm, or company a greater compensation than from another for the transportation in this state of any freight of the same kind or class, in equal or greater quantities, for the same or a less distance, which *prima facie* evidence may be rebutted by competent testimony on part of such company, showing that the discrimination, if any, was not an unjust one, and the question shall be a question of fact : Tex. 4257.

Provided, that when the distance from the place of shipment to the point of destination of any freight is fifty miles more or less, a charge not exceeding thirty cents per hundred pounds may be made for the transportation thereof : Tex. 4257.

Any person or corporation engaged in transporting passengers or freights over any railroad in this state, who shall exact, receive, or demand more than the rate specified in any bill of lading issued by such person or corporation, or who for his or its advantage, or for the advantage of any connecting line, or for any person or locality, shall make any discrimination in transportation against any individual, locality, or corporation, shall be guilty of extortion : Miss. 1884,23,1.

It shall be unlawful for any such person or corporation to make any rebate or reduction from such tariff in favor of any person, locality, or corporation which shall not be made in favor of all other persons, localities, or corporations by a change in such published rates, except as may be allowed by the commission : Miss. 1884,23,6.

Any officers or employees causing passenger or freight trains to be run by a time schedule with discrimination against any other road or against any main line in favor of any branch line, or who shall fix the freight tariff so as to discriminate against the interest of any other railroad or the interests of the people affected thereby, or which may operate in favor of any railroad or person, is guilty of a misdemeanor : Fla. 71,12.

Nothing in this act shall be construed to deny to railroads the right to provide separate accommodations for passengers, as they may deem best for the public comfort and safety ; provided, that no discrimination is made on account of race or color, and that the furnishing of separate accommodations with equal facilities and equal comfort at the same charges shall not be considered a discrimination : Ore. 4029.

This section, however, is not to be construed as prohibiting a less rate per one hundred pounds in a car-load lot than is charged, collected, or received for the same kind of freight in less than a car-load lot : Io. 1888,28,3 ; Mo. 2635 ; Col.

Nor for making a less rate for car-load lots than in less quantity, or for lots of five car-loads than single cars : Col.

In special cases, designed to be made to promote the development of the resources of the state, special rates may be made, with the approval of the commissioner : Col.

Provided further, that if one corporation should use, operate, or otherwise control, wholly or in part, several lines or divisions of hitherto independent railroads within the state, the commission may, in their discretion, conjointly with the said corporations, fix different rates of toll or compensation for freight traffic on each of said hitherto independent lines or divisions ; provided further, that the railroad commission, conjointly with the railroad companies, shall have authority to make special rates for the purpose of developing all manufacturing, mining, milling, and internal improvements in the state : S.C. 1887,384.

**Penalties.** In the event of any contract having been entered into by any railroad company in this state with any person or company whereby preferences or exclusive rights of transportation, either in priority or in arrangements, are given to such person or company, the attorney-general is hereby instructed to institute proceedings against such railroad company for a forfeiture of its charter : N.C. 1969.

Any officer or agent of any railroad subject to this act, who, by means of false billing, false classification, false weight, or by any other device, shall suffer or permit any person or persons to obtain transportation for property at less than the regular rates then in

force on such railroad, or who by means of false billing, false classification, false weighing, or by any device whatever, shall charge any person, firm, or corporation more for the transportation of property than the regular rates, shall be guilty of a misdemeanor, and on conviction thereof fined in a sum of not less than one hundred dollars nor more than one thousand dollars : Tex. 1891,51,16.

Every railroad company which shall fail or refuse, under such regulations as may be prescribed by the commission, to receive and transport without delay or discrimination the passengers, tonnage, and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as may be prescribed by the commission, fail and refuse to transport and deliver without delay or discrimination any passengers, tonnage, or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad, shall be deemed guilty of unjust discrimination ; provided, perishable freights of all kinds and live stock shall have precedence of shipment : Tex. 1891,51,15(b).

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor ; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case, to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom : U.S. 1887,104,10.

**§ 8338. Short-Haul Clause.** No railroad corporation shall charge or receive for the transportation of freight (or passengers, Ark.) to any station on its road a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at (an equal or, O.) a greater distance on its road in the same direction : N.H. 160,19 ; Mass. 112,190 ; Ct. 3545 ; O. 3373 ; Ill. 114,147 ; N.C. 1966 ; 1887, 42 ; Mo. 2629 ; Ark. 1887,81,1 ; S.C. 1334.

Two or more railroad corporations whose roads connect shall not charge or receive for the transportation of freight to any station on the road of either of them a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the road of either of them in the same direction. In the construction of this section, the sum charged or received for the transportation of freight shall include all terminal charges ; and the road of a corporation shall include all the road in use by it, whether owned or operated under a contract or lease : Mass. 112,190 ; Vt. 1882, 36,2 ; Ct.

*Except* as to freight arising out of the state and destined to points beyond it, in car-load lots : Vt.

Also if it charge, collect, or receive for the transportation of any passenger or freight the same or a greater amount than shall at the same time be charged for any passenger or like kind of freight of the same class being transported (in the same direction, Ill., Io.) over any portion of the same railroad of equal (greater, Io.) distance, it is extortion : Ill. ; Io. 1888,28,24 ; S.C. 1442.

It is unlawful to charge or receive any greater compensation (per ton per mile, Minn.) for a similar amount or kind of property for carrying, receiving, storing, forwarding, or handling the same for a shorter than a longer distance (1) in the same direction : Minn. 513 ; N.C. 1966 ; 1887,42 ; Ore. 4032.

(2) In one continuous carriage : Nev. 897 ; S.C. 1443.

(3) Or from or to the same point : Minn.

A railroad must not charge any greater rate of compensation for freight upon goods transported between way stations, or between a terminal and a way station, than they charge between (to or from) the terminal stations : N.J. R.Rs. 37 & 103 ; W.Va. 54, 82e, 1X.

A railroad corporation whose railroad is located in the state shall not charge a larger sum for freight, merchandise, or passage of passengers thereon for a less distance to or from a way station on said road than is charged for a greater distance ; and in case of a violation of this provision, the excess so charged may be recovered from said corporation by the party aggrieved, in an action for money had and received, with full costs : Vt. 3427.

Every company whose line of road, or any part thereof, is within this state, shall so employ its rolling stock used for the transportation of freight as to afford as ample facilities for the transportation of local and way freight, delivered to or discharged by it along its line of road, as it affords for the transportation of through freight, in proportion to the amount of its rolling stock, and shall not give facilities for transportation to either class of freight in preference to the other : O. 3372.

No railroad or other carrier shall charge or receive a rate of compensation for passengers or freight over a portion of its line, whether wholly or partly in the state, more than is charged by it for a like class of passengers or freight over the entire length of its line. Va. 1207.

Nor shall it charge or take a higher rate of transportation when going from a city within this state beyond the state than is charged for the like transportation over its entire line from any point beyond the state to the same place : Va. 1207.

Nor shall it take or charge for transportation from some point beyond the state to any place in the state a higher rate than is charged at the same time for like transportation over its entire line from the same point to any place beyond the state : Va. 1207.

Nor shall it violate or evade such conditions by any arrangement, nor by contract or otherwise rent or farm out any part of its local or other tonnage business, nor employ on commission any person to solicit such business : Va. 1207.

It is unlawful for any railroad to charge for the transportation of any freight of any description over its road a greater amount as toll or compensation than shall at the same time be charged by it for the transportation of an equal quantity of the same class of freight transported in the same direction over any portion of same railroad of equal distance : N.C. 1966 ; Mo. 2629. Nothing in this chapter shall be taken in any manner as abridging the right of any railroad company from making special contracts with shippers of large quantities of freight, to be of not less in quantity or bulk than one car-load : N.C.

It shall also be an unjust discrimination for any railroad subject hereto to charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for a shorter than for a longer distance over the same line : Tex. 1891, 51, 15(c).

" It shall be unlawful for any person or persons engaged in the transportation of property, as provided in section one of this act, to charge or receive any greater compensation per car-load, or part thereof, of similar property, for carrying, receiving, storing, forwarding, or handling the same for a shorter than for a longer distance in one continuous carriage : " Nev. 897.

It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation per ton per mile for the contemporaneous transportation of the same class of freight for a longer than for a shorter distance over the same line, in the same general direction, or from the same original point of departure,



or to the same point of arrival ; but this shall not be construed as authorizing any common carrier subject to the provisions of this act to charge as high a rate per ton per mile for a longer as for a shorter distance : N.D. 1890,122,7.

It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance ; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance : U.S. 1887,104,4.

But this shall not be construed as authorizing any common carrier subject to the provisions of this act to charge or receive as great compensation for a shorter as for a longer distance : Minn. 512 ; Neb. ; N.D.

Nothing in this act shall be taken in any manner as abridging the right of any railroad company from making special contracts with shippers of large quantities of freight, to be of not less in quantity than one car-load : N.C. 1887,42,1.

In construing the term "shorter distance," twenty miles shall be construed the unit, and it shall be lawful to collect and receive the same amount for all fractions of said unit as for the unit : N.C. 1887,187,1.

In cases where freight or passengers pass over continuous roads, lines, or routes operated by more than one common carrier, such continuous roads, lines, or routes may be considered for the purposes of this as one road : N.H. ; N.C. 1887,187,2.

And the road of a corporation shall include all the road in use by such corporation, whether owned or operated under a contract or lease by such corporation : provided, that nothing in this chapter contained shall be construed so as to require any corporation or combination of corporations to regulate their charges for shorter distances by their proportion of through rates between terminal or junctional competitive points : S.C. 1887,384,1.

"Chapter twenty-eight of the acts of the twenty-second general assembly shall not be construed to prohibit the making of rates by two or more railroad companies for the transportation of property over two or more of their respective lines of railroad within this state, and a less charge by each of said railroad companies for its portion of such joint shipment than it charges for a shipment for the same distance wholly over its own line within the state shall not be considered a violation of said chapter : " Io. 1890,17,1.

Nothing in this act shall be construed to mean that said railroads may charge as much for a shorter distance as for a longer distance, the shorter being included within the longer, but they shall not be required to charge a proportionate *pro rata* per mile : N.C. 1887,42,2.

Nothing in said "act to regulate freight rates" shall be construed to require any corporation or combination of corporations to regulate their charges for shorter distances by their proportion of through rates between terminal, junctional, or competition points ; nor shall anything in said act apply to the carrying of freights which come from or go beyond the boundaries of this state : N.C. 1887,187,4.

Provided, however, that upon application to the commission appointed under the provisions of this act such common carrier may, in special cases, after investigation by the commissioners, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property : and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act : Minn. 512 ; Neb. ; Tex. 1891,51,15 ; N.D. 1890,122,6 ; 1891,95 ; U.S. 1887,104,4.

Provided, that no manifest injustice shall be imposed upon any citizen at intermediate points. Provided, further, that nothing herein shall be so construed as to prevent the

commission from making what are known as "group rates" on any line or lines of railroad in this state: Tex. 1891,51,15(e).

Provided, that if such corporation or combination of corporations can show a greater necessary expense to itself, or to themselves, for the carriage of goods, merchandise, or property over the shorter distance than that which is incurred for like carriage over the longer distance, a proper proportion of such excess of necessary expense shall be deemed a reasonable additional charge. In the construction of this section, the sum charged or received for the transportation of freight shall include all terminal charges, and the road of a corporation shall include all the road in use by such corporation, whether owned or operated under a contract or lease; but nothing in this section shall be construed so as to require any corporation or combination of corporations to regulate their charges for shorter distances by their proportion of through freight beyond their line or lines: S.C. 1334.

Any railroad company violating any provision of this section shall be deemed guilty of unjust discrimination, and shall for each offence pay to the state of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars: Tex. 1891, 51,15(d). Two hundred dollars: Ct. 3546. See also § 8834, note.

**§ 8839. Pools and Pooling Contracts.** It shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offence: Io. 1888,28,6; Minn. 510; Neb. 1887,60,5; Mo. 2638; Ark. 1887,81,5; Nev. 896; Ore. 4031; N.D. 1890, 122,4; U.S. 1887,104,5.

All common carriers are forbidden to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or any other device, a continuous carriage of freight; and no break of bulk or stoppage made shall prevent the carriage of freights from being treated as one continuous carriage, unless it was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this act: Io. 1888,28,8; Minn. 509; Neb. 1887,60,8; Mo. 2642; Ark. 1887,81,6; Ore. 4031; Nev. 895,896; N.D. 1890,122,3; U.S. 1887,104,7.

Provided that nothing herein contained shall be construed to require any railroad in class C connecting with or crossing a trunk line to accept for its share of freight from such trunk line a *pro rata* part of the total freight for the whole distance: Mo.

A company whose road forms part of any line of railway between points common to any other line shall not contract or agree with any person, or with any other railroad company or companies, having a road or line of roads, or forming a part of any line of roads, between the same points, not to carry freight or passengers to or from such common points, nor shall it refuse to receive or carry any freight or passengers brought to it to be so carried: O. 3368.

It shall be unlawful for any railway company to make any contract or enter into any stipulation with any other railway company running in the same general direction, by which either company shall, directly or indirectly, agree to divide in any manner or proportion the joint earnings upon the whole or any part of the freight transported over such roads, and any violation of this provision shall render the railway company violating the same liable to a penalty of five thousand dollars for each month for which such earnings are divided, to be recovered for the use of the permanent school fund in the name of the state: Io. 1297; Kan. 23,179.

Contracts between any such corporations operating a railway, allowing a drawback of not exceeding fifteen per cent on the gross earnings of the railway on business coming from or going to any other railway, shall be legal and binding: Io. 1298.

Any such corporation owning and operating a railway partially constructed may, for the purpose of inducing the investment of capital in the extension or completion of its railway, contract with the party furnishing such means, or the trustees who may represent them, allowing a drawback not exceeding twenty per cent of the gross earnings of all business coming from and going to any part of the extension or portion to be aided or completed with the money or means thus obtained, or such railway company may lease of the trustees or said parties the portion to be built with means thus furnished, subject to the same rights and liabilities as are provided in the next section: Io. 1299.

Any contract, lease, or benefit derived therefrom, contemplated in either of the three preceding sections, may be mortgaged for the purpose of securing construction bonds in the same manner as other property of the corporation: Io. 1301

It is unlawful for railroad companies to pool freights or to allow rebates on freights: N.C. 1968.

"Or by equalizing, evening up, or dividing the property or passengers carried by such railroads:" Ark. 1887,81,5.

All contracts, agreements, or arrangements of any and every nature, made or entered into by any railroad company or companies doing business in this state for the pooling of earnings of any kind, with any other railroad company or companies, shall be forthwith submitted by the said railroad companies to the commissioner for his inspection and approval, so far as they may be affected by any of the provisions contained in this chapter, for securing to all persons just, equal, and reasonable facilities for transportation of freight and passengers; and if the said contracts, agreements, or arrangements shall, in the opinion of the commissioner, in any way be in violation of any of the provisions of this chapter, the commissioner shall forthwith notify the said railroad companies, in writing, of his objections thereto, specifying such objections; and if the said railroad companies shall fail or neglect within five days after such notice to amend and alter such contract, agreement, or arrangement, in a manner satisfactory to the commissioner, the commissioner shall hereupon call upon the attorney-general to institute and conduct such legal proceedings as may be necessary to enforce the penalties prescribed in this chapter for such violations of its provisions: S.C. 1464.

It shall be unlawful for two or more railroad companies, or persons operating railroads in this state, to enter into any agreement, directly or indirectly, for the division among themselves of the freight-carrying business at any station, town, or city in this state, or into any pool arrangement of like nature or character, the purpose or effect of which shall be to prevent free and fair competition among such companies or persons for such business, or to establish extortionate rates in favor of such companies or persons in doing such business, or to operate in undue restraint of the trade or business at such station, town, or city; and any such agreement made by any convention or association of freight agents, or commissioner of freight rates, or rate-making committee outside of the state, but to be therein performed in whole or in part, shall as to such part thereof as is to be performed within the state be also unlawful. But no agreement, rate, or pool arrangement, made for the purpose of cheapening freight rates, or of extending additional facilities to the public generally, or to any station, town, or city in this state, which is not extortionate, or in undue restraint of the trade at any station, town, or city in this state, shall be construed as coming within the meaning of this section; and any agreement, rate, or pool arrangement having the certified approval of the railroad commissioners shall be deemed *prima facie* lawful and just in any proceeding before any court or officer of this state: Ala. 1163.

All contracts heretofore made, or which shall hereafter be made, between railroad

companies, or between any parties whatever, restricting or abridging or purporting or intending to restrict or abridge the right, privilege, franchise, or power of any railroad company or companies to build or operate its or their road or roads, or any part thereof, within this territory, or any part thereof in any direction or directions, or to any part thereof within this territory, or any part thereof in any direction or directions or to any extent whatever; or to make any railroad connections, or to co-operate with any corporation or person in any railroad or other business, or to promote the construction or operation of any railroad, or to establish any parallel or competing line or branch, or to establish or promote any competitive business, or to deal with any railroad corporation or other corporation, firm, or individual, or to waive any corporate duty, object, or franchise, being contrary to public policy, are hereby declared to be null, void, and inoperative in this territory; and no suit, action, or proceeding in law or equity shall be brought or maintained in any court to enforce any such contract, or to recover damages for any breach or non-performance thereof: N.M. 2730.

### **Art. 884. Of Freight.**

§ 8840. **General Liability.** (See §§ 4342-4345, 4349, 4352-4361, in Vol. I.) Such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property: N.D. 1890, 122, 3d; Minn. 509(d). See § 8830(B).

“ Provided, that the trip or voyage shall be considered as having commenced from the time of the signing of the bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges. It is further provided, that should the consignee of the goods fail to receive them promptly after such notice is served, the liability of the railroads thereafter shall be the same as that of warehousemen” (and see § 8843, and § 4352 in Vol. I.): Tex. 4258b, 8.

§ 8841. **Receipt.** Railroads must keep correct accounts of the time at which freight is received for shipment, and transport the same in its proper time; and the shipper may have access to such accounts in case of litigation: Mo. 2586.

All depot agents of any railroad corporation having depots in this state shall, if required by the consignor, weigh goods, merchandise, and all other kinds of property delivered for transportation at the depot, when delivered, and receipt for the same: W.Va. 54, 82c, XI; Ga. 1889, p. 135.

Sworn weighers must be employed: Ga. 1883, p. 127.

And every person and corporation engaged as aforesaid shall receive, load, unload, transport, store, and deliver to the consignee thereof any and all property offered for shipment at and for charges not greater than those specified in such schedule; shall demand and issue to shippers duplicate freight receipts, which shall state the class of freight shipped, the weight and charges. All the provisions of this act shall apply to all property, and all the services in and about the transportation thereof on one actually or substantially continuous carriage, or a part thereof, and to the compensation therefor, whether the same is carried wholly on one railroad or partly on several railroads, and whether the services are performed or compensation paid or received by one person or corporation alone, or in connection with another, or other persons or corporations: provided, that at points where freights are subject to competition by routes not controlled by this act nor complying with its provisions, the schedule herein provided for may be posted and go into immediate effect: Ark. 1887, 81, 7.

§ 8842. **Bills of Lading.** (Compare generally Vol. I., Art. 434.) When a person delivers to a railroad corporation for transportation a commodity (not extra

hazardous, Mass.) such corporation shall without additional charge give to him, if requested at the time of such delivery, a receipt describing the same or the marks and numbers on packages so delivered: Mass. 112,187; Ct. 3548; S.C. 1513; Ala. 1174; Fla. 39,34.

Every steamboat, canal, railroad, or other company doing the business of a common carrier in this state shall, at the time such company delivers any articles shipped or transported over its line, furnish to the owner or consignee thereof, or to his agent, a bill plainly stating the class of freight to which said articles belong, the weight thereof, and the rate charged for transporting the same: Va. 1209; Ga. 2078.

All railroad companies shall, on demand, issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and so far as practicable shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the article shipped on payment of the rate charged for the class of freights mentioned in the receipt: Kan. 23,180; Ark. 1887,81,7; 1885,31.

It has a general duty to receive, transport at its proper charges, and deliver: Fla. 39,34.

Any railway company organized under the laws of this state, upon the receipt of iron ore or grain or other merchandise from any vessel, water craft, or other source for storage and deposit, duly consigned to said company, may, upon the request or demand of the owner or owners of said ore, grain, or other merchandise, and with the written consent of the consignee, issue to the owner or owners of said ore, grain, or other merchandise a certificate, receipt, or voucher, which certificate, receipt, or voucher shall name the railway company by whom said ore or grain or other merchandise is held at the time said certificate, receipt, or voucher is issued, to whom said ore, grain, or other merchandise was consigned, the quantity held by said company, and so near as may be the quality or grade thereof, but not incurring any liability for the grade or quality, which certificate, receipt, or voucher shall be signed by the president or vice-president of said company, and countersigned by the general agent of said company appointed for that purpose, or such other officers as may be appointed by said railway company, and shall be transferable and negotiable by indorsement thereon by the person or persons to whose order the same is made payable. That on the presentation of said certificate, receipt, or voucher so indorsed to said railway company at its general offices (by) the holder or holders thereof and on demand, the said railway company shall deliver to said holder or holders the iron ore or grain or other merchandise so described therein, on the payment by such person or persons to said railway company (of) all proper charges thereon: O. 8516-47.

It is made felony for any officer or agent to execute any bill of lading for property which is not in the possession or control of the railroad: Mich. 3383. See § 4359.

It is also a felony for any person having possession of such bill of lading knowing it to have been so executed to sell or pledge the same for value or as security for a past debt: Mich. 3384.

A railway must provide forms of lading in writing, or print and issue any reasonable number thereof to every consignor of freight asking therefor. Said bills of lading must be signed by the agent of such corporation receiving such freight, and must describe the freight so as to identify it, and state the name of the consignor and the terms of the contract for carriage. It must also contain an agreement or promise that the freight shall be delivered at the place of destination therein designated to the order or assigns of a particular person or corporation therein designated: N.M. 2679.

Any corporation formed under this act shall be exonerated from liability for freight by delivery thereof in good faith to any holder of a bill of lading therefor, properly indorsed or made in favor of the bearer: N.M. 2680.

The Interstate Commission Act makes the false billing, classification, weighing, etc. of railroads or other common carriers, or their agents, or by consignors or consignees, in order to obtain transportation at less than the regular rates, a misdemeanor : U.S. 1887,104,10. And so in : Ga. 1889,134. See also § 8837.

And so also if by the shipper : U.S.

**Penalty.** If any such company fail or refuse to furnish such bill to the owner or consignee, at the time of the delivery as aforesaid of the articles transported, such company shall not be entitled to receive anything for transporting the same, and shall forfeit to such owner or consignee three times the amount of the charges for such transportation : Va. 1210.

It shall be the duty of the railroad commissioner to make inquiry for the purpose of ascertaining whether anything has been done or omitted in violation or contravention of the three preceding sections, and, if such shall be the case, to report the same to the general assembly : Va. 1212.

**§ 8843. Transportation and Delivery.** Any railroad company, its officers, agents, or employees, having possession of any goods, wares, and merchandise of any kind or character whatever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges as shown by the bill of lading : Ark. 1885,31 ; Tex. 4258a,2 ; Fla. 39,34 ; La. 1888,93.

It is made the duty of the railroad to deliver freight, when required by the owner, at the terminus of the road, or at any junction of a road, or within a reasonable distance from such junction, not exceeding one quarter of a mile : N.J. R.Rs. 28.

When freight has been carried and delivered at any point specified by the shippers other than the depot of the company, the railroad is not responsible for the safety and security thereof : N.J. R.Rs. 47.

No railroad shall claim, demand, or collect from any shipper or consignee of merchandise or freight, any sum, damage, or charge for the delay or detention of cars in loading or unloading the same for any period of less than four consecutive days, Sundays and legal holidays excluded ; such four days to be computed from the time the cars shall be accessible to the shipper or consignee for the purpose : Ct. 1889,212.

Nor any sum or charge for the storage of any merchandise or freight for any period less than two consecutive days, Sundays and legal holidays excluded ; such two days to be computed from the time of the arrival of such merchandise or freight at the place of delivery : Ct. 1889,212,2.

No railroad company shall have any lien upon any merchandise or freight, unless such railroad shall, upon request, deliver to the consignee a copy of the bill or statement of such charges and advances as the same appears upon the way-bill : Ct. 1889, 212,3.

Every railway company in this state is authorized to make personal delivery of every parcel, package, or quantity of goods or property, if the consignee of such property shall reside within two miles of the terminus, or railway station, or other terminus of the carriage of such property by the main line of such carrier, and they are hereby authorized to employ or own all the means necessary to perform such duty, and to place the men and vehicles therefor under the government and sole regulation of the superintendent or other proper officer of such companies. Such delivery shall be at the house, shop, office, or other place of business of the consignee, according to the nature of such property, and where the owner or consignee desires to have the same ; provided, that in all cases where the consignor or consignee shall desire to have said property taken at the depot, station, or terminus of the carriage of the same, he shall be at liberty to do so : Mich. 3408.

Nothing in this act shall be so construed as to interfere in any way with the right of railroad companies to collect or deliver freights from and to any of their depots or else-

where ; and said railroad companies shall, under this act, have the right to collect and deliver said property : provided that no additional charge shall be made therefor ; provided further, that nothing herein contained shall be so construed as to preclude any owner or shipper of any such goods, freight, or property from hauling the same to or from any place or places connected with any railroad where such property, freight, or goods are deliverable : Mich. 3419.

All freight shall be deliverable to the consignee at the depot of the company in the place where directed, unless the consignee consent to the delivery of the same at his place of business or elsewhere by drays or trucks owned or employed by the railroad ; provided, that within a reasonable time after the arrival of such freight the railroad shall give notice thereof to the consignee : Mich. 3420.

Delivery may not be delayed for any alleged overcharge, provided the freight, if any, agreed upon in writing be paid : Col. 1885, p. 311,9 ; La. 1888,93.

All shippers shall be authorized to deliver any freight to any of the company depots at the usual place of deposit ; and it shall not be lawful for a railroad to charge, collect, or receive any cartage on goods unless actually carted or drayed by the company at the request of the shipper : Mich. 3421.

Unlawful for any railroad company operating in this state to allow any freight they may receive for shipment to remain unshipped for more than five days unless otherwise agreed : N.C. 1967.

It shall be unlawful for any railroad company in this state, its officers, agents, or employees, to charge and collect, or to endeavor to charge and collect, from the owner, agent, or consignee of any freight, goods, wares, and merchandise, of any kind or character whatever, a greater sum for transporting said freight, goods, wares, and merchandise than is specified in the bill of lading : Ark. 1885,31 ; Tex. 4258a,1. And compare § 8833.

Any railroad company, its officers, agents, or employees, that shall refuse to deliver to the owner, agent, or consignee any freight, goods, wares, and merchandise, of any kind or character whatever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares, or merchandise to an amount equal to the amount of the freight charges for every day said freight, goods, wares, and merchandise is held after payment, or tender of payment, of the charges : Ark. 1885,31 ; Tex. 4258a,3.

Railroads are not allowed to charge storage upon freight received for delivery unless the owner or consignee neglect to remove it within three days after notice of its reception, which notice may be given or posted on the depot door : but after the expiration of such time the company may remove and store such goods at the expense of the owner or consignee : Tex. 4237. (Compare Vol. I., §§ 4352,4353.)

Whenever any article or articles of freight shall be shipped to any point within the limits of this state, whether shipped from a point beyond the limits of this state or not, it shall and may be lawful for the consignee or consignees of said article or articles to demand and receive from the agent or agents of the railroad company delivering the same, and before the payment of any charges upon the same, a full and correct statement of said charges, the class to which the articles belong, and rate charged, showing the total amount to be paid by said consignee or consignees, together with the proportion of the same to be paid to each road over which or any part of which said freight may have passed, whether such road be beyond the limits of this state or not ; provided, that, if not within the power of such agent or agents so to do, the items shall be procured as soon as possible : S.C. 1446 ; 1889,235.

It shall be a misdemeanor for any railroad agent to refuse to give any consignee or consignees the information set forth in the preceding section : S.C. 1447.

In all cases the railroad company delivering freights to consignees shall be required

to settle their freight charges according to the contract as set forth in the bill of lading from the shipping point, and they are hereby forbidden to retain the article of freight after the consignee offers and is ready and willing to comply with the terms of said bill of lading : S.C. 1448.

Whenever any corporation has issued a bill of lading for freight, or other instrument substantially equivalent thereto, it may require the surrender thereof, or a reasonable indemnity against claims thereon, before delivering the freight therein mentioned : N.M. 2681.

Every corporation formed under this act may lawfully demand the payment of fares and freights in advance ; and if they be not paid in advance, such corporation shall have a lien upon the luggage of the passenger for his fare, and upon the freight for freightage due thereon, and may retain possession of such luggage and freight until such fare or freightage shall have been paid : N.M. 2682.

Provision is usually made for the sale of unpaid freight by auction, after notice by publication ; and of perishable freight immediately after giving notice or without notice. The proceeds less expenses to be refunded to the owner if he make claim at any time within five years : N.H. 160,26-28 ; N.Y. 1854,282,10-12 ; 1857,444,3-4 ; N.J. R.Rs. 43-47 ; Mich.<sup>a</sup> 3327 ; Mo. 2605 ; Miss. 1055 ; La.<sup>a</sup> 1890, 124. See also §§ 4350, 4351, Vol. I.

If such freight or freightage be not paid within ten days after the same is due, such luggage or freight may be sold by such corporation, in the same manner and with the same consequences as are provided for the sale of unclaimed baggage : N.M. 2682.

NOTES. — <sup>a</sup> Two years : N.J. Mich. One year : Miss., Mo. Six months : La. At any time : N.H.

§ 8844. **Dangerous Freight.** No railroad corporation shall transport or carry any gunpowder, dynamite, nitro-glycerine, or like explosive articles, in any baggage, mail, express, or passenger car : Wis. 1805 ; Mon. G. L. 200 ; S.C. 1504.

No railway is required to carry such goods at all : N.J. R.Rs. 20.

Or oil of vitriol, or lucifer matches : N.J., Mon.

Or in any vehicle attached to any railroad train or vehicle conveying passengers : S.C. 1504 ; nor in any case, unless the said explosive compounds be plainly and legibly marked with the names of such compounds, and the words " Explosive — Dangerous : " S.C. ; Pa. Com. Car. 11.

If not so marked, the shipper is liable for all damages resulting, besides a penalty : N.J., Pa.

No person shall deliver for transportation any explosive compound, unless the same is packed and marked as herein provided, and notice of the dangerous nature thereof is expressly given : S.C. 1505 ; Pa. Com. Car. 11 ; and any common carrier may decline to receive to transport any such explosive compound in any manner whatever : S.C.

It shall be the duty of the railroad commissioner, from time to time, to make rules fixing the maximum amounts of various explosive compounds which may be so carried in any public vehicle, or in a railroad train containing passengers, or in a vehicle attached to such train : S.C. 1504.

The said rules shall also define the method of packing such compounds to insure the greatest safety, and shall prescribe how the same shall be carried as freight on railroads, steamboats, and by common carriers : S.C. 1504.

The transportation of intoxicating liquors into the state or within the state is regulated and made subject to penalty : Io. 1881,143.

§ 8845. **Special Laws concerning Grain, etc.** Every railroad is required to receive and transport grain in bulk within a reasonable time, and load the same



upon its track, or at any warehouse adjoining its track or side track, without distinction or discrimination between one shipper and another, or as to the manner in which it is offered for transportation, or as to the person or place to whom it may be consigned: Ill. 114,118; Mo. 2620.

A railroad is required to weigh the same, and give a receipt therefor stating the true weight, and deliver it to the consignee without any deduction for shrinkage or loss; in default of such delivery, it is liable in damages for the full market value at the time and place where it should have been delivered: Ill. 114,118; Mich. 3422 amt.; Mo.; N.D. 1891,97.

Except that one half of one per cent is allowed for loss on bulk grain: Mo.

If the railroad neglect or refuse to give such receipt, the sworn statement of the shipper, or his agent having personal knowledge of the amount shipped, shall be taken as true: Ill. 114,118; Mich.; Mo. 2621.

Every railroad is bound to deliver grain in bulk to any consignee, warehouse, or place which can be reached by any track which can be used by said corporation, and it shall permit connections to be made with its track to and from public warehouses: Ill. 114,120; Mich. 3422 amt.; Mo. 2617.

So of cattle, stock, etc.: Mo. 2590.

Provision is made requiring railways at certain places to make provision for the weighing of grain in bulk: Ill. 114,192-3.

Whenever any shipper shall order one or more cars from any railroad company for the purposes of transportation of stock or grain, he shall have the right and privilege to put in said car or cars two or more species of live stock or different kinds of grain; and no railroad company or railroad agent shall charge for any car in which is shipped two or more species of live stock any greater prices than are charged when only one species of said stock is shipped therein, nor shall said railroad agent or railroad company charge any greater sum when two or more kinds of grain which is in said car is shipped, provided that said different species of stock or kinds of grain which are placed in said car or cars do not exceed the maximum limit of pounds allowed by law and by the railroad company when only one species of live stock or one kind of grain is shipped in said car or cars: provided further, that when more than one kind of stock or grain shall be shipped in the same car, the highest rate may be the rate of freight to be charged: Kan. 23, 216; Mo. 2594-5; 2634; N.D. 1890,124,2; 1891,197.

All consignments of grain to any elevator or warehouse are made subject to change by the consignee or consignor at any time previous to actual unloading. Failure to observe such change of direction is deemed conversion, and the railroad is liable (1) in double the value of the property; and no extra charge is permitted by reason of such change: Ill. 114,121.

(2) For the value, and a money penalty: Mo. 2618.

Any consignee shall have twenty-four hours after actual notice of the arrival of grain shipped in bulk in which to remove the same from the cars, they being left in a convenient place for unloading: Ill. 114,122; Mo. 2619.

Such change of consignment shall not be held to authorize any change except as to the place of delivery, and does not affect the ownership or control of property in any other way: Ill. 114,124; Mo.

Any bill of lading, receipt, or contract releasing such railway company from the responsibility or liability to deliver the same amount by weight as they received from the consignor shall be void: Mich. 3422 amt. And see § 8830.

Every railroad shall receive any and all grain offered, and give a bill of lading therefor, and transport the same at the tariff then in force and according to section 8832, to

the elevator, warehouse, or mill to which it is consigned, and deliver the same if there be any track connecting therewith at the place directed, not more than one half-mile from the railroad of such corporation, and shall make no increased charge because of such delivery by such spur track, except so much as it is actually required to pay to the owner of such track for the use thereof for such delivery : Wis. 1799.

Provision is made for the feeding of cattle in transportation by their owners, and for their proper bedding : Pa. Com. Car. 9 ; R.Rs. 109 ; S.C. 1479 ; Wis. 1799a.

For their prompt shipment without discrimination : Mo. 2591.

For a caboose for the shipper of the cattle : Mo. 2603.

For platforms for shipping at stations : N.D. 1890,123.

Railroads are forbidden in the transportation of cattle to confine them in cars for a longer period than thirty-six hours without unloading for rest and feed for a period of at least ten hours : Nev. 912.

So, twenty-eight hours : S.C. 1479.

Whenever any shipper of hogs, cattle, sheep, horses, or other animals shall present his stock at any railroad station, and to any railroad agent, it shall be the duty of said railroad agent to count or cause to be counted said hogs, cattle, sheep, horses, or other animals, and the number so counted shall be by the agent named in the bill of lading or receipt for said stock : Kan. 23,215 ; Mo. 2593 ; N.D. 1890,124.

All railroad companies doing business in this state shall furnish to shippers of live stock, horses, cattle, sheep, or swine, suitable stock or cattle cars : Minn. 2597 ; Wis. 1799a ; Mo. 2590.

All railroad companies are hereby required to provide cars with double decks for the shipment of sheep, goats, hogs, and calves : Mo. 2598 ; Tex. 4227b,1.

It shall not be lawful for any railroad company to charge more for shipping a double-decked car-load of sheep, goats, hogs, or calves, than is charged for shipping a car-load of other cattle or horses the same distance and in the same direction : Mo. 2599 ; Tex. 4227b,2.

The charge and rate of such cars of mixed live stock for transportation as aforesaid may be the highest rate for transportation of either class or kind of such stock so transported in said mixed car-loads by said railroad company : Minn. 2599 ; Wis.

Every railroad shall receive any live stock offered to it, during the months from February to September inclusive, in mixed car-loads containing different kinds of live stock, and deliver to the shipper the usual bill of lading therefor ; provided that each such kind shall be properly separated by sufficient partitions from each other kind ; second, that if the partitions shall become loose, so as to allow such live stock to become mixed during transportation, and they are thereby injured, the corporation shall not be liable therefor ; and thereupon the corporation is to unload such car at the first station where there are stock yards, and repair such partition, for which service it may charge five dollars per car additional rate ; and fourth, the corporation may charge for such live stock the current rate for the highest class of live stock in each mixed car. The railway shall feed and water such stock as shall be unloaded under these provisions at its own expense, where detained by them for a longer period than six hours : Wis. 1799a.

Twenty-four thousand pounds shall be deemed the minimum weight for a car-load of such mixed stock when such car is thirty feet long, and such minimum weight shall be more or less than twenty-four thousand pounds, in proportion as such car is more or less than thirty feet long : Mo. 2595.

It shall be unlawful for any railroad company, steamboat company, or other common carrier, doing business in this state, to become a party to any combination or monopoly for the purpose of controlling the compression of cotton in bales in the interest of special individuals, firms, or companies : Tenn. 2368.

And railways and carriers must receive and transport cotton at regular schedule rates, without discrimination : Tenn. 2369.

All cotton packed in bales, transported by common carriers within the limits of this state, shall be classed as "heavy goods," — that is to say, an article to be weighed, and charged for and treated accordingly ; provided, that any common carrier, before receiving such cotton for shipment, shall have the right to demand from the shipper the weights of the several bales thereof, and to adopt the same as the weights upon which freight is to be charged ; and in case of loss, no recovery shall be had by any shipper for a greater amount than the weights so furnished by him : S.C. 1449.

There are further special provisions for the transportation of (1) firewood : Wis. 1800.

(2) Milk : N.H. 160,21-23 ; R.I. 1890,835 ; Ct. 3544.

For breach of the provisions of this section, the company is liable to the aggrieved party in treble the actual damages : Mo. 2597 ; N.Dak. ib. 3.

**§ 8846. Express.** Every railroad operating in the state shall furnish reasonable and equal facilities and accommodations to all persons engaged in express business for transportation of themselves, agents, servants, merchandise, and other property ; for the use of their depots, buildings, and grounds, and for exchanges at points of junction with other roads (under a penalty not exceeding five hundred dollars, to be recovered by indictment, Me.) ; and are also liable to the aggrieved party in an action on the case for damages : Me. 51,134 ; Mo. 2660-2 ; Tex. 4255a.

They may charge to express companies, or persons doing express business, any rate they choose : N.J. R.Rs. 40.

All individuals and corporations shall have equal rights to have their express freight transported : Col. 2803 ; N.M. 1891,81.

Railroads are allowed to charge for express matter or property, the handling of which is attended with extraordinary expense or risk, double rates : N.J. R.Rs. 41.

Railroads are not liable for goods carried by express companies duly authorized to do business : Va. 1217.

Railroads may not rent or farm out any part of their freight tonnage by reason of the two preceding sections : Va. 1218.

When any corporation obtains from a railroad the right of transportation by express, and shall receive articles at a place without the state to be carried to a place within the state, or *vice versa*, the amount of compensation shall be regarded as a uniform rate of charge per pound per mile of the whole distance within and without the state : Va. 1219.

It may receive compensation for express business not exceeding (1) one dollar and forty cents for every dollar charged at the time for like articles by freight, or one tenth of one per cent per hundred miles upon coin, bank-notes, or other evidences of debt : Va. 1215.

(2) One and one half times the usual freight rates : N.M. 1891,81.

Express companies may charge one dollar and fifty cents for every dollar charged by the railroad at the time for like goods in freight, and for coin, etc., the same rate : Va. 1215.

Railroads are authorized to carry goods on passenger trains for a rate of compensation exceeding that of freight ; provided such express articles shall not exceed fifteen thousand pounds in weight at one time : Va. 1215.

All railroads are required to furnish reasonable and equal facilities upon reasonable and equal rates to all corporations and persons engaged in the express business for transportation and the use of cars and depots : Tex. 1887,123.

Every railroad has the right to transact the express business over its line, and to assume the custody and control over all express matter : Col. 2801.

But a railroad may at its option enter into any contract with any person or corporation engaged in the express business to allow him or it rights and privileges for the transaction of express business upon its line ; but in all cases an agency must be maintained at every station : Col. 2802.

No railroad or other person shall charge for express more than double first-class fare rates as they now exist : Col. 2803.

Express companies are declared to be common carriers : Ind. 2911a,2912 ; Tex. 1891,45.

[For laws concerning express companies specially, see § 8499 ; and also Ind. 2911a-d, 2912-2914 ; Va. 1216 ; Tex. 1891,45.]

The rates of express companies may, in Texas, be regulated by the railroad commissioners : Tex. 1891,45.

§ 8847. **Car-loads.** Any person or corporation, not a common carrier, may own or lease railroad cars, and loan to and build the same for any railroad company, and all railroads shall receive and transport the same with reasonable despatch ; provided such car be constructed in conformity to the regulations of the company, and having arrived at its destination shall be unloaded and returned to its starting point with like despatch, unless otherwise ordered by the shipper, the same as the car belonging to any road, provided that it may be reasonably loaded upon its return trip by the railroad, and the owner be allowed a reasonable sum for such use : Kan. 23,182.

When the owner applies in writing for cars on which to ship freight, it is the duty of the railroad to supply the number of cars required at the point indicated within a reasonable time, not to exceed six days therefrom, and to furnish suitable cars to persons applying therefor in the order of application, under penalty, one fourth of the freight money being deposited by the applicant at the time ; and if the cars have been supplied and loaded, the railroad must deliver them to the consignees within a reasonable time, and they shall unload the same, under penalty of twenty-five dollars per day for each car failed to be furnished : Tex. 1887,139. Compare § 8830(F).

§ 8884. **Connecting Roads.** (See §§ 8723, 8725, 8726, 8830.) If any such corporation shall become liable to pay any sum by reason of the neglect or misconduct of any other corporation, the corporation paying such sum may collect the same of the corporation by reason of whose neglect or misconduct it became so liable : R.I. 158,21.

When there are several connecting railroads under different companies, and the goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus and until delivery to the connecting road ; the last company which has received the goods as "in good order" shall be responsible to the consignee for any damage, open or concealed, done to the goods, and such companies shall settle among themselves the question of ultimate liability : Ga. 2084. See § 8723.

## Art 885. Of Passengers.

§ 8850. **General Rights.** (See § 4347.) Railroads are forbidden to exclude any persons from their passenger cars on account of color or race, or to compel them to occupy any particular part of any car, or any particular car : Pa. R.Rs. 104.

But in some states they may assign passengers to any car or part of a car, the accommodations being equal : Miss. 1888,263 ; La. 1890,111. See § 6054.

And in some they are required to provide separate cars, of equal accommodation, for whites and blacks : Tenn. 2364 ; Ark. 1891,17 ; Tex. 1889, p. 132 ; 1891,41 ; Ala. 1891,185 ; Miss. 1888,27 ; Fla. 1887,3743 ; La. 1890,111.

No common carrier, and no servant, agent, or employee of such common carrier, shall make any discrimination between persons carried on account of race, color, or previous condition : S.C. 1337 ; Ga. 3035.

Every railroad corporation must furnish on the inside of its passenger cars sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon ; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars : Cal. 5483 ; Dak. Civ. C. 477 ; Ida. 2677 ; Oka. 1064.

It must furnish sufficient seats : Miss. 1890,88.

Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers : Ida. 2678.

Every railroad corporation shall furnish reasonable accommodation for the convenience and safety of passengers : S.C. 1502. See § 8830.

The ticket agent of any railroad, steamboat, or other transportation company doing business in this state, shall at all times have power to refuse to sell a ticket to any person applying for the same who may be at the time intoxicated : N.C. 1885,358,1.

And such corporation may decline to receive any person afflicted with any contagious disease, or otherwise unfit to be admitted into its cars : N.M. 2671.

All persons who own or operate railroads in this state are hereby authorized and empowered to do and perform all acts and things which may be necessary to protect passengers on their cars from all acts of fraud, imposition, or annoyance which are attempted or perpetrated while said passengers are on said cars : Ark. 1889,93,1.

**§ 8851. Ejectment.** The conductor of a train of cars, on any railroad, may arrest and temporarily hold any person guilty of such breach of the peace, until a warrant can be obtained or he can be placed in custody of the proper officers of the law : Me. 51,74 ; O. 3435 ; Ind. 3924 ; Ill. 114,108 ; Mich. 3371-2 ; Wis. 1817a ; S.C. 1516.

Employees may be appointed policemen : N.H. 160,29 ; Vt. 3446 ; N.Y. 1890, 65,58 ; N.J. R.Rs. 21-26 ; O. 3427 ; Ind. 3923 ; Wis. 1861a ; Md. 23,288 ; Va. 1230 ; N.C. 1988-9 ; S.C. 1516 ; Miss. 1890,88 ; Fla. 1891,4072 ; Oka. 1078. And compare § 8827.

They, and the masters of steamboats, are "invested with police powers while on duty : " Ill. 114,105 ; Va.

If a passenger refuses to pay his fare or toll, or (except in N.H., N.Y., Mich., Wis., Neb., N.C., Ark., Nev., Dak., Ida., Uta., Fla.) is disorderly or drunk, or (except in N.H., O., Ind., Ill., Wis., Ark., Fla.) refuses to comply with the reasonable regulations of the corporation for the government of passengers (or plays cards or any game of chance for money, O., Ind. 3922, Ill. 114,107, Miss., N.M., Ariz.), the conductor of the train and the servants of the corporation may put him out of the cars at or near a station, or upon any part of the railroad near or in sight of a dwelling-house, causing the train to be stopped for that purpose : Vt. 1886,22 ; N.Y. 1890,565,40 ; N.J. R.Rs. 113 ; Ill. 114,94 ; Mich. 3370 ; Wis. 1818 ; N.C. 1962 ; Mo. 2581 ; Cal. 5487 ; Dak. Civ. C. 485 ; Ida. 2684 ; Fla. 39, 40 ; Oka. 1075.

Only at any regular station : R.I. 158,32 ; Ind. 3921 ; Ark. 5474 ; Nev. 883 ; Uta. 2354 ; N.M. 2665(13).

"Within five miles of any station : " Neb. 1,16,107.

Anywhere on the line : N.H. 160,6 ; O. 3434 ; Ind. 3922 ; Ill. 114,106 ; 1889, p. 224 ; Tenn. 1898 ; Miss. 1888,26,4 ; Ariz. 313(13).

Using no unnecessary force : Wis., Neb., Cal., Miss., N.M., Ariz.

But not at a dangerous place or a bridge : N.J.

But only on tendering the proportion unearned of his fare, if paid : Ind. 3922 ; Ill. 114,106.

If a passenger or other person behaves in a noisy or disorderly manner, the conductor, baggage-master, or brakeman of the train may remove such person to the baggage car, and there detain him until he arrives at his destination, or until he is placed in the custody of an officer : N.H. 160,8.

Gambling is forbidden in any depot or car : Wis. 1817.

§ 8852. **Baggage.** Every railroad corporation, if requested, shall give checks to passengers for their baggage when delivered for transportation, and shall re-deliver the same to the passengers upon the surrender of such checks : Mass. 112,182 ; Vt. 3432 ; N.Y. 1890,565,44 ; 1847,272,6 ; N.J. R.Rs. 115 ; Ill. 114,92 ; Mich. 3325 ; N.C. 1970 ; Mo. 2606 ; Tex. 4230 ; Cal. 5479 ; Nev. 876 ; Ida. 2674 ; Uta. 2356 ; S.C. 1503 ; Miss. 1056 ; N.M. 2669 ; Ariz. 323.

Passengers are allowed by law personal baggage to be transported without other charge than their fare, to the extent of eighty pounds : R.I. 158,3.

One hundred pounds : N.Y. 1847,270,8 ; Pa. R.Rs. 106 ; Ill. ; Tex. See § 8832.

One hundred and fifty pounds : Mich. 3323 amt.

And three hundred dollars in value : Pa.

If, on producing said check, his or her baggage shall not be delivered to him or her by the agent or employee of said railroad company, he or she may, himself or herself, be a witness, in any suit brought by him or her to recover the value thereof, to prove the contents and value of said baggage : Nev. 876, Uta., N.M., Ariz.

But such suit shall be brought within three months : N.M. Twelve months : Ariz.

Every passenger shall be entitled to have taken with him by the same train, in consideration of the fare paid by him, a reasonable amount of personal baggage (and see § 8832) ; but if such baggage exceed in value one hundred dollars, the proprietors of the railroad shall not be liable for its loss or damage beyond that sum, unless notice is given thereof, and extra charges paid for the risk : N.H. 160,15.

The proprietors of every railroad shall be responsible for the safe transportation and delivery of all such baggage at the station for which the same was received, and in default thereof shall be liable to pay the owner the damage sustained, after the expiration of thirty days from the time notice of the loss or injury is given to some officer, agent, or servant of said proprietors : N.H. 160,16.

No railroad is liable for damage to baggage beyond said three hundred dollars, unless the excess was truly declared at the time of its delivery, and the sum charged by said company for such transportation paid ; provided, that said declaration shall not relieve the claimant from proving actual value ; but there must be no recovery beyond such value : Pa. R.Rs. 107.

No railroad providing a baggage car is liable for loss of any articles or property not deposited there, or which are placed by the passenger in the car in which the passenger is : Pa. R.Rs. 108.

Any baggage-master or other person, whose duty it is to handle, remove, or take care of the baggage of passengers, who shall wilfully or recklessly injure or destroy any trunk, valise, box, package, or parcel while loading, transporting, unloading, delivering, or storing the same, shall be punished by a fine or imprisonment : N.H. 160,17 ; N.Y. 1890,565,45 ; Pa. Crimes, 262 ; Ill. 38,193 ; 114,93 ; S.C. 1450

And railroads are required to furnish and use stage-planks or trucks in loading baggage : Ark. 1891,43.

That any such railroad company, whose agents or employees shall carelessly or willfully injure, or allow to be injured or lost, any trunk or baggage, either by improper handling or otherwise, shall be liable in a sum not less than double the amount of the actual damage : Miss. 1057.

Every corporation formed under this act shall safely and securely keep, as warehouseman, all unclaimed baggage for the space of three (twelve, Ariz.) months, at the expiration of which time it may sell the same at public auction, after ten days' public notice by publication. The proceeds of such sale shall be paid, less the expenses of the sale, to the owner, upon demand and proof of ownership, at any time within sixty days after the sale, after which date all right of action therefor shall be barred : N.M. 2670 ; Ariz. 324.

So, commonly, provision is made for the sale at auction of unclaimed baggage after a certain time : Me. 51,81-84. See Vol. I., § 4354.

§ 8853. **Tickets.** Every corporation must provide, and, on being tendered the fare therefor, furnish to every person desiring a passage on its cars a ticket which shall entitle the purchaser to a continuous ride and to the accommodations provided on its cars from the station where the same shall be purchased to any other station on the line of its road which the purchaser may designate. The station of departure and the station of destination shall be designated on the face of the ticket : N.M. 2678.

Checks must be given for any excess of fare collected over the rate at the station : R.I. 158,31.

Railroads and all common carriers must redeem the whole or any parts of coupons of any tickets unused, at a proportionate rate ; but the sale of such unused tickets, except to the company, is forbidden : Pa. Com. Car. 5 ; Ind. 2906 ; Ill. 114,116 ; Wy. 1946.

Every railroad corporation must provide, and, on being tendered the fare therefor fixed as provided in section 8832, furnish to every person desiring a passage on their passenger cars a ticket which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars : Cal. 5490.

All passenger tickets shall be transferable by delivery : Col. 1885, p. 310,7.

And shall be good for one passage over the part of road expressed therein : Col.

Not more than ten cents excess shall be charged for tickets bought in the cars, which shall be refunded for the certificate given by the conductor : Mass. 1883,32.

Tickets for passengers shall be good until used : N.J. R.Rs. 103.

Any person having an established place of business in any village, town, or city within this territory shall have the right to buy, sell, and exchange passage tickets or other evidences of a right of passage from one place to another upon any railroad line or steamboat line and their connections that said tickets may have been regularly issued over and for : Oka. 1076.

Any person purchasing a ticket from the authorized office of any line for the transportation of passengers shall have the right to sell his ticket or tickets to any person doing business under this act ; provided, that nothing in this act shall be construed to

prevent any incorporated village, town, or city to regulate this business by any law deemed necessary for the protection of the public: Oka. 1077.

It shall be lawful for such carrier or corporation to insure the lives and persons of passengers against loss or injury from accidental causes, and however happening while in their charge, and for that purpose to issue and sell to such passengers applying for the same tickets of policies of insurance specifying the name of the insured, the premium charged, the particular trip or time covered by the policy, and the amount insured, not exceeding (except at the option of the said carrier or corporation) the sum of twenty-five dollars for each week of disability for a period not longer than twenty-six weeks in case of personal injury, nor more than ten thousand dollars in case of death: Pa. Com. Car. 10.

All persons, companies, and corporations operating sleeping or parlor cars in this state are common carriers. Whenever a person pays for the use of a double lower berth in a sleeping car, he shall have the right to direct whether the upper berth shall be opened or closed, unless the upper berth is actually occupied by some other person; and it shall be the duty of the proprietors of the car, and of the persons in charge of it, to comply with such direction: N.H. 160,10.

### **Art. 886. Liabilities of Railroads, and Remedies.**

§ 8860. **General Penalty ; Corporation.** (See § 8834.) Every such corporation shall be liable for all damages sustained by any person in consequence of any neglect of the provisions of this chapter: Io. 1267; Miss. 1058.

Every railroad company that shall run and operate its locomotives and trains upon the track and road of another railroad company shall be liable to third persons for all damages occasioned by such locomotives and trains, in the same manner and to the same extent as though the track and road upon which such locomotives and trains were run and operated belonged to the company owning and operating the same: Ind. 4001. See § 8830(C).

All railroads which are now or may be hereafter built and operated in whole or in part in this state shall be responsible for all damages to persons and property (1) done or caused by the running of trains in this state: Ark. 5537; Miss. 1059.

(2) In consequence of any neglect on the part of the railroad companies: Kan. 23,92; Ga. 3033-4; Fla. 1891,4071.

And such injury is declared *prima facie* evidence of want of care: Miss.

The corporation is liable for trespasses and injuries to lands and buildings adjoining or in the vicinity of its road, committed by a person in its employment, or occasioned by its order, if the party injured within sixty days thereafter gives notice thereof to the corporation; but its liability does not extend to acts of wilful and malicious trespass. The person committing a trespass is also liable: Me. 51,39.

Or for neglect on their part to make good and sufficient crossings at points where lines of travel cross the railways, the damage so sustained to be determined before the nearest court having jurisdiction, and to be collected, in case payment is refused, by attachments and sale of any company property which can be found: Uta. 2359. See § 8814.

In all cases where the person or property of an individual may be injured, or such property destroyed, by any corporation engaged as a common carrier in the transportation of freight or passengers, or both, either by land or water, such corporation shall be liable to pay damages to any one whose person or property may be so injured or destroyed, notwithstanding the fact that such corporation was acting without the scope of its charter, if such corporation would be liable for such damages if acting within its chartered powers and authority: Ga. 1884-5, p. 136.



Every railroad company shall be liable for all damages which may be sustained by any person, in consequence of the neglect or mismanagement of any of their agents, engineers, or clerks, or for the mismanagement of their engines; but for injury to any passenger upon any freight train not being intended for both passengers and freight, such company shall not be liable except for the gross negligence or carelessness of its servants: Miss. 1054. See § 8850.

Any railroad company which shall violate any of the provisions of this act (1) shall forfeit, for every such offence, to the person, company, or corporation aggrieved thereby, three times the actual damages sustained by the said party aggrieved, together with the costs of suit, and a reasonable attorney's fee, to be fixed by the court: Kan. 84,122.

(2) Is liable to a penalty, as, \$500: Miss. 1884,23,23. \$1000: Ark. 1887,81,12. \$50: Fla. 39,41. \$100 to \$5000: Kan. 84,123. Compare § 8834.

The officers or employees are liable to the same penalty, and each day the same is done shall constitute a separate cause of action; but all actions must be brought within one year after the cause accrues to the knowledge of the party injured, and a notice in writing accompanied by the name must first be delivered to the company: Ark. 1887, 81,12.

**Remedies.** If any person is aggrieved by any corporation carrying persons or property for hire by reason of anything done or omitted to be done in violation of its duty in such regard, he has a summary remedy in the circuit court, which court may make such order and enforce the same by injunction, attachment, or other process, as in the case of equity jurisdiction; either party may appeal to the court of appeals: Md. 23,185.

Any person aggrieved by anything done or omitted in violation of §§ 1207, 1208, by a railroad or other carrier, has a special remedy in equity by complaint, and the court may enforce obedience by injunction, and moreover ascertain the damages to which the complainant is entitled and decree the same to be paid: Va. 1213.

So in: Ark. 1887,81,13.

**§ 8861. General Penalty: Employees.** (See generally in Part V., Vol. III.) Any person employed in conducting trains, who is guilty of negligence or carelessness causing an injury, shall be punished by imprisonment in jail not exceeding one year, or by fine not exceeding one thousand dollars; but the corporation employing him is not thereby exempt from responsibility: Me. 51,67; Vt. 3442.

When an engineman, fireman, or other agent of a railroad corporation, is guilty of negligence or carelessness, whereby an injury is done to a person or corporation, he shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding one thousand dollars: Mass. 112,210; Fla. 68,30.

Whoever, having the management of or control over a railroad train while being used for the common carriage of persons, is guilty of gross carelessness or neglect in or in relation to the management or control thereof, shall forfeit a sum not exceeding five thousand dollars, or be imprisoned not more than three years: Mass. 112,211; Fla. 68,31.

Suits for injury to the person must be commenced within two years: N.J. R.Rs. Suppl. 9.

It is made a penal offence to prevent the moving or running of trains by force, threats, or intimidation of any kind: Tex. 1887,92.

And if, by reason of any unlawful act, any accident should happen to life or limb of any person riding or being in the cars of such railroad, then such person or persons shall be guilty of felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for any term not less than three nor more than ten years: Nev. 887.

The agent or employee of any such company who shall violate any of the provisions of this act (or any regulations of the company, N.J.), whether he has received proper

instructions from the company or not, shall also be liable to prosecution for a misdemeanor, and be fined : N.J. R.Rs. 2 ; Miss. 1058.

If any brakeman, switchman, or other person in charge of any switch, shall wilfully or carelessly leave the same open or improperly placed, whereby any person shall be killed or injured, he shall, on conviction, be imprisoned in the penitentiary not more than fifteen years : Miss. 1061.

§ 8862. **Liability to Employees.** Every railroad corporation shall be liable for all damages sustained by any agent or servant thereof by reason of the negligence of any other agent or servant thereof, without contributory negligence on his part, when sustained within this state : Wis. 1816a ; Minn. 2606 ; Ga. 3036 ; Fla. 1891,4071.

No contract, rule, or regulation between any such corporation and any agent or servant shall impair or diminish such liability : Minn.

Railroads are forbidden to adopt regulations or make contracts with employees by which they agree to hold the company harmless on account of any injury they may receive by reason of defect in or accident to the cars or machinery owned or operated by the company : O. 1890, p. 149.

No such corporation may compel or require any employee to join any company or association whatsoever, or withhold any part of his wages for the payment of dues or assessments, or require, as a condition precedent to employment, or discharge an employee, because he refuses to become a member of any society or organization. If an employee is discharged, he may, within ten days thereafter, demand the reason of such discharge in writing : O. 1890, p. 149.

No railroad company, insurance association, or other person, shall require or enter into any contract with any person about to enter, or in, the employ of any railroad, whereby such person agrees to surrender or waive any right to damages against any railroad thereafter arising for personal injury or death, or whereby he agrees to surrender or waive any other right whatsoever, and all such agreements shall be void and the corporation liable to a penalty : O. 1890, p. 149.

If an employee is injured by reason of any defect in rolling stock or machinery, the corporation is charged with knowledge of such defect, and its existence is *prima facie* evidence of negligence against the corporation : O. 1890, p. 149.

It is further declared that no person in the employ of a railroad company having authority to direct or control any other employee is a fellow servant, nor any person in the employ of such company having charge or control of employees in any separate branch or department is a fellow servant, but is held to be the superior of other servants who have no power to direct or control in the department in which they are employed : O. 1890, p. 150.

Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employees of the corporation : Io. 1307 ; Kan. 23,93 ; or in consequence of the wilful wrongs, whether of commission or omission, of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding : Io.

"As such companies necessarily have many employees who cannot possibly control those who should exercise care and diligence in the running of trains, such companies shall be liable to such employees as to passengers for injuries arising from the want of such care and diligence." Ga. 2083.

§ 8863. **Liability to Passengers, etc.** In case any passenger on any railroad shall be injured on the platform of a car, or on any baggage, wood, or freight car, in violation of the printed regulations of the company,<sup>a</sup> posted up at the time in a conspicuous place inside of its passenger cars then in the train, such company shall not be liable for the injury : N.Y. 1890,565,53 ; N.J. R.Rs. 121 ; Ind. 3928 ; Mich. 3386 ; Neb. 1,16,110 ; N.C. 1978 ; Mo. 2587 ; Cal.<sup>a</sup> 5484 ; Nev. 882 ; Dak. Civ. C. 476 ; Ida. 2678 ; Uta. 2353 ; N.M. 2674 ; Ariz. 327 ; Oka. 1063 ; provided said company at the time furnished room inside its passenger cars sufficient for the proper accommodation of its passengers : N.Y., Ind., Neb., N.C., Mo., Cal. 5483, Nev., Dak., Ida., N.M., Ariz., Oka.

No railroad corporation shall be fined for the death of a person walking or being on its road contrary to law, or to its valid rules and regulations : Me. 51,69.

If any person shall be injured by a locomotive engine, car, or cars, whilst walking, standing, or playing on any railroad in this state, or by jumping on or off a car whilst in motion, such person shall be deemed to have contributed to the injury sustained, and shall not recover any damages therefor from the company owning or operating the said railroad ; provided, however, that this section shall not apply to any person or persons crossing a railroad at any lawful public or private crossing : N.J. R.Rs. 67.

If any person not connected with or employed upon the railroad shall walk upon the track or tracks thereof, except where the same shall be laid across or along a publicly travelled road or street, or at any crossing, as hereinbefore provided, and shall receive harm on account thereof, such person shall be deemed to have committed a trespass in so walking upon said track in any action brought by him on account of such harm against the corporation owning such railroad, but not otherwise : Mo. 2611.

"Whereas, the supreme court has recently decided that it is not the duty, under existing laws of the railroad companies in this state, to keep an outlook for trespassers on their tracks ; that it is and shall be the duty of all persons running trains in this state upon any railroad, to keep a constant lookout for persons and property upon the track of any and all railroads, and if any person or property shall be killed or injured by the neglect of any employees of any railroad to keep such lookout, the company owning and operating any such railroad shall be liable and responsible to the person injured for all damages resulting from neglect to keep such lookout, and the burden of proof shall devolve upon such railroad to establish the fact that this duty has been performed : " Ark. 1891,125.

Every railroad company, as aforesaid, shall be liable for all damages inflicted upon the person of passengers while being transported over its road, except in cases where the injury done arises from the criminal negligence of the persons injured, or when the injury complained of shall be the violation of some express rule or regulation of said road actually brought to his or her notice : Neb. 1,72.1,3.

NOTE. — <sup>a</sup> Or of verbal instructions given by any officer of the train : Uta., Cal.

§ 8864. **Accidents resulting in Death.** Every railroad corporation shall give immediate notice of an accident on its road, which is attended with loss of life, to the medical examiner of the county residing nearest to the place of accident : Mass. 112,208 ; Me. 51,65 ; Mich. 3440 ; and shall also give notice within twenty-four hours to the board of railroad commissioners : Mass. ; R.I. 158,18 ; Mich. See also § 8575.

In case of accident, it is illegal to withhold, delay, or alter telephones sent by passengers : O. 1891, p. 429.

Whenever the death of a person is caused by wrongful act, neglect, or default of a railroad,<sup>a</sup> or its agents, the railroad is liable for damages : Me. 1891,124 ;

N.J. Death, 1; Mich. 3391; Md. 67,1; W.Va. 103,5; Ky.<sup>b</sup> 57,1; Nev. 3898; Col. 1030-1; Tex. 2889,2900; Mon.<sup>a</sup> C. C. P. 14; G. L. 981; Uta. 2961; Ga.<sup>a</sup> 1887, p. 45; Fla.<sup>a</sup> 1883,3439; N.M. 2309; 1891,49; Ariz.<sup>a</sup> 2145; notwithstanding the death of the person so injured, and although caused under such circumstances as amounted in law to felony: Me., N.J., Mich., Md., W.Va., Tex., Nev., Col., Mon., Uta., Fla., N.M., Ariz.

So, it is not necessary first to bring criminal proceedings: R.I. 204,19 · Tex. 2902; Ariz. 2148.

The railway may show no negligence in defence: Col.

If by reason of the negligence or carelessness of a corporation operating a railroad or street railway, or of the unfitness or gross negligence of its servants or agents while engaged in its business, the life of a passenger, or of a person or employee, being in the exercise of due diligence and not a passenger or in the employment of such corporation, is lost, the corporation shall be punished by fine of not less than five hundred nor more than five thousand dollars, to be recovered by indictment prosecuted within one year from the time of the injury causing the death, and paid to the executor or administrator for the use of the widow and children of the deceased in equal moieties; or, if there are no children, to the use of the widow; or, if no widow, to the use of the next of kin; but a corporation operating a railroad shall not be so liable for the loss of life by a person while walking or being upon its road contrary to law or to the reasonable rules and regulations of the corporation. If the corporation is a railroad corporation, it shall also be liable in damages, not exceeding five thousand nor less than five hundred dollars, to be assessed with reference to the degree of culpability of the corporation or of its servants or agents, and to be recovered in an action of tort, commenced within one year from the injury causing the death, by the executor or administrator of the deceased person, for the use of the persons hereinbefore specified in the case of an indictment. But no executor or administrator shall, for the same cause, avail himself of more than one of the remedies given by this section: Mass. 112,212; 1883,243.

Any railroad corporation, by whose negligence or carelessness, or by that of its servants or agents while employed in its business, the life of any person, in the exercise of due care and diligence, is lost, forfeits (1) not less than five hundred, nor more than five thousand dollars, to be recovered by indictment found within one year, wholly to the use of his widow, if no children: and to the children, if no widow; if both, to her and them equally; if neither, to his heirs: Me. 51,68.

(2) Five thousand dollars, to be recovered by the husband or wife; if none, or he or she fail to sue, by the minor children, or, if deceased be a minor, by the father and mother: N.M. 2308.

If the life of a person, passenger in any conveyance, when used by common carriers, or whether passenger or not, in the case of proprietors of or common carriers by means of railroads or steamboats, or the life of any person crossing upon a highway with reasonable care, is lost by reason of the negligence of such carriers, their servants, or their unfitness, in this state, such carrier or proprietor is liable in damages on the case: R.I. 204,15.

When the death of one is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action had he lived, against the latter for an injury for the same act or omission. The action must be commenced within two years. The damages cannot exceed ten thousand dollars (five thousand dollars, Minn.), and must inure to the exclusive benefit of the widow and children, if any, or next of kin, to be distributed in the same manner as personal property of the deceased: Minn. 1891, 123; Kan. 80,422.

If the life of any person or persons is lost or destroyed by the wilful neglect of another person or company, their agents or servants, then the widow, heir, or personal

representative of the deceased shall have the right to sue such person or company, and recover punitive damages for the loss or destruction of the life aforesaid : Ky. p. 777, § 3.

When any person shall be wounded by a railroad train running in this state, he may sue for damages in his own name ; or, if he be a minor, his father, if living, may sue ; and if the father be dead, then the mother may sue ; and if both father and mother be dead, then the guardian of such minor may sue for and recover such damages as the court or jury trying the case may assess : Ark. 5539.

"Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it ; the right of this action shall survive in case of death in favor of the minor children or widow of the deceased, or either of them, and in default of these, in favor of the surviving father and mother, or either of them, for the space of one year from the death. The survivors above mentioned may also recover the damages sustained by them by the death of the parent or child, or husband or wife, as the case may be." La. 1884,71.

Such action must be brought by and in the names of the persons representatives of the deceased : Me. ; R.I. 204,18 ; N.J. Death, 2 ; Mich. 3392 ; W.Va. 103,6 ; Ky. ; Nev. 3899 ; Mon. G. L. 982 ; Uta. 2962 ; N.M. 2310 ; 1891,49.

By the husband or wife ; if none, or he fail to sue, by the heirs : Col. 1030 ; Fla.

Or by any person dependent on the deceased, or his executors, etc. : Fla.

Or by the widow, at her option : R.I.

By the wife, husband, parent, and child : Md. 67,2 ; Tex. 2903 ; Ariz. 2149.

The amount recovered is distributed to the persons and in the proportion provided by law for the distribution of intestate personal property : N.J. ; Mich. 3392 ; W.Va. ; Mon. ; Uta. ; N.M.

Half to the widow or husband, half to the children ; if none, all to the widow ; if none, all to the next of kin : R.I. 204,15-16 ; Me.

It is apportioned among those entitled as the jury find : Tex. 2909 ; Ariz. 2155.

To the widow or husband ; if none, to the children and grandchildren ; if none, to brothers and sisters ; if none, as in intestate distribution, subject only in the latter case to the claims of creditors : Nev. 3899.

Such actions must be brought within two years of the death : Me. ; Col. 1033 ; W.Va. ; Uta. ; Fla.

Within one year : N.J., Md.

Three years : Mon.

By the parties, within three months ; if they fail, the executor must sue, unless requested to the contrary by all the parties entitled : Tex. 2906.

So, six months : Ariz. 2151.

In addition to such action a like one may be maintained by any person having a direct pecuniary interest in the life of the deceased : R.I. 204,17.

In every such action the jury may give such amount of damages as they shall deem fair and just to the persons who may be entitled to such damages when recovered : N.J. ; Mich. 3392 ; Md. ; W.Va. ; Nev. 3899 ; Mon. G. L. 982 ; Ga. ; Fla. ; N.M.

Between three thousand and five thousand dollars : Col.

Not over five thousand dollars : Ind. 4023 ; Me.

Ten thousand dollars : W.Va., Uta. Twenty thousand dollars : Mon.

Exemplar damages may be given for wilful acts or gross negligence : Ky. ; Tex. 2901 ; Nev. ; N.M. ; Ariz. 2147.

NOTES. — <sup>a</sup> Of any person or corporation : N.J., Me., Mon., N.M. <sup>b</sup> Provided such person be not an employee : Ky.

§ 8865. **Fire.** Every railroad corporation and street railway company shall be responsible in damages to a person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines, and shall have an insurable interest in the property upon its route for which it may be so held responsible, and may procure insurance thereon in its own behalf: N.H. 159,29-30; Mass. 112,214; Me. 51,64; Vt. 3444; Ct. 3581; N.J. R.Rs. 14; Wis. 1828a; Mo. 2615; S.C. 1511.

But it is not liable "when it has used due caution and diligence, and employed suitable expedients to prevent:" Vt.

"When it has used all practicable means to prevent:" N.J. R.Rs. 13 & 16.

Suits for injury by fire must be brought within one year: N.J. Suppl. R.Rs. 10.

Within three years: Col. Two years: N.M. 2726.

Any corporation operating a railway shall be liable for all damages by fire that is set or caused by operating of any such railway: N.J. R.Rs. 14; Io. 1289; Kan. 23,165; Md. 23,198; Col. 1887, p. 368; Uta. 2359.

And the fact of the fire is *prima facie* evidence of negligence: Kan., Md.

Contributory negligence may be proved only in reduction of damages: Kan.

Appraisers may be appointed to estimate the damage, as in the case of stock killing (§ 8816): Col.

The proprietors of every railroad shall be liable for all damages which shall accrue to any person or property by fire or steam from any car, locomotive, or other engine on such road: N.H.; Minn. 2607.

Without the owner or owners of the property so damaged being required to show defect in their engines or negligence on the part of their employees; but the fact shall be construed by all courts as *prima facie* evidence; provided that the said railroad corporation may show that said damage arose from the default or negligence of the party injured: Minn. 2607.

In all actions against any person or incorporated company for the recovery of damages on account of any injury to any property, whether real or personal, occasioned by fire communicated by any locomotive engine while upon or passing along any railroad in this state, the fact that such fire was so communicated shall be taken as full *prima facie* evidence to charge with negligence the corporation: Ill. 114,103.

It shall not, in any case, be considered as negligence on the part of the owner or occupant of the property injured that he has used the same in the manner, or permitted the same to be used or remain, in the condition it would have been used or remained had no railroad passed through or near the property so injured, except in cases of injury to personal property which shall be at the time upon the property occupied by such railroad: Ill. 114,103.

Railroads are liable for damages by fire originating either from the engines or fires set by company employees by order of the officers, or fires otherwise originating in the constructing or operating of the railroad; but not if proved that the fire arose from engines whose machinery, etc. was in good order and properly managed, or other fires when all reasonable precautions had been taken and proper efforts made to extinguish them in case they are extended beyond the limits of the road: the existence of such fire having been communicated to any officer of the company: Mich. 3378.

Every railroad is required to have spark arresters, etc. on every locomotive: N.J. R.Rs. 15; O. 8516,39; Va. 1264; Ky. 900,1.

Or other practicable means to prevent fires caused by it: N.J. R.Rs. 13.

It shall be the duty of all railroad corporations to keep their right of way clear from all dead grass, dry weeds, or other dangerous combustible material, and for neglect shall be liable (1) to penalties: Ill. 114,63; Mich. 3443; 1891,16; Wis. 1814a; Mo. 2614; Wyo. 1947-9; 1891,34.

(2) For actual damages : Mon. G. L. 719.

So, to cut all noxious weeds on any land owned by them (between July 1 and July 15, or August 20) : Vt. 1882,40 ; Ind. 1889,82 ; Mich. 3443-4 ; Wis. 1480a. (Twice a year) : N.Y. 1890,565,52 ; Mo. (No time is specified) : Ill. 38,42.

Every railroad is required to plough, as a fire guard, a strip of not less than six feet in width on each side of its route between July 15 and November 1 : Col. 2796 ; N.M. 2723 ; 1884,34.

Railroad companies are required to cut and burn grass, etc., from their right of way, at least twice a year, under proper care. And locomotives running through forest lands must be provided with contrivances for arresting sparks and preventing the escape of fire from the ash-pan ; and where trainmen discover forests or woodlands adjacent to a railroad are burning, it is made their duty to report the same at the next station ; and the person in charge of such station shall take prompt measures for extinguishing such fires. In seasons of drought, and especially during the first dry times in the spring, the railroad companies shall employ a sufficient additional number of trackmen for the prompt extinguishment of fire, and concentrate such help and adopt measures to arrest a forest fire raging near the line of the road : N.Y. 1885,283,25-28.

Every railroad shall cut down all trees standing on its lands, which are six or more inches in diameter, two feet above the ground, and of sufficient height to reach the road-bed if they should fall : Tenn. 1307. See § 8741.

Every railroad company shall be required to keep the right of way of such company clear and free from weeds, high grass, (and) decayed timber, which from their nature and condition are combustible material, liable to take and communicate fire(s) from passing locomotives to abutting or adjacent property. And such company shall be liable for all damage sustained by the owner or occupant of abutting property from any carelessness or neglect to keep such right of way clear of combustible material as herein provided : O. 1890, p. 99.

**§ 8866. Liability for Trespasses upon Railroad.** If any person shall wilfully do, or cause to be done, any act whatever whereby any building, construction, or work of any railroad corporation in this state, or any engine, machine, or structures, or any matter or thing appertaining to the same, shall be stopped, obstructed, injured, impaired, weakened, or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation so injured, etc. treble the amount of damages sustained by means of such offence : Ark. 5481 ; Nev. 887.

Besides fine and imprisonment : Nev.

So any person who removes, interferes with, etc. any journal bearings or other parts, etc. of any engine or car, or any fixture used therewith, is subject to imprisonment from one to five years ; or, if life be lost as a result, it is murder : Ill. 1889, p. 115. So, it is felony : Nev.

Corporations owning or using any railroad, steamboat, canal, rolling-mill, ship-yard, car factory, or manufacturing establishment of any kind, within this state, may, jointly or severally, from time to time, apply by petition to the governor to commission such person or persons as the said corporation or corporations may designate to act as special constables for the protection of the property of said corporation or corporations, and for the preservation of peace and good order on their respective premises, railroad trains, or steamboats, and also for the protection of persons travelling thereon. The governor upon such application may, if he thinks it proper so to do, appoint such persons, or so many of them as he may deem proper, to be such special constables, and shall issue to every person so appointed a commission for the term of two years, unless sooner revoked : Del. V. 17,148,1-2.

**Art. 887. Suits.** (See also Art. 830.)

§ 8870. **Suits by and against Railroads.** Railroads may sue their stockholders for debts, arrears, or other demands, in the same manner as other persons: Col. 343. Compare § 8300.

§ 8871. **Service of process** may be made on the president, secretary, treasurer, engineer, agent, or (except in Dak.) any director of the railroad: Pa. R.Rs. 93; Wis. 1887,552; Ark. 4979; Dak. C. C. P. 102. Compare § 8302.

President, director, or agent: W.Va. 124,2.

President, secretary, superintendent, or general solicitor: Fla. 39,32.

Upon any conductor of a train or weigh-master: Neb. 1,72,4; Wy. 2431; N.M. 1887,58.

Upon any station or ticket agent: Mich. 8147 amt.; Io. 2611; Neb.; W.Va. 52,20; Ark.; Dak.; Wy.; S.C. 1883,288; Miss. 1529; N.M.; Ariz. 704.

Or "left at the usual place of business in the county:" Neb.

Service may be made upon the president, treasurer, or secretary of a railroad, or when the corporate property is situated partly in the county, upon any manager or director in such county, or an adjoining county: Pa. Corps. 97.

If the president, treasurer, secretary, and chief clerk of a railroad company cannot be found in the county where suit is brought, process may be served upon any manager or director in that or an adjoining county: Pa. R.Rs. 94; Wis.

Or station agent: Wis.

It shall be sufficient to serve the same upon any conductor of a freight or passenger train of cars, or upon any weigh-master at any station or depot along the line, or at the end of the railroad of such company; and such service shall be deemed as good and effectual as if made on the officers, stockholders, or members, or either of them: Mich. 8147.

Every railroad company (having no office in the state, Ind.), and the vendee, lessee, or other party running any railroad in the state, shall appoint an agent in every county through which it runs for service of process: Ind. 4039; Kan. 80,68a.

**Venue.** Railways may commonly be sued in any county through which they run: Wy. 2416; Fla.; Ariz. 674.

In any county where the cause of action originated: Ga. 3406.

§ 8872. **Attachment.** Capital stock shall be liable to attachment and sale under legal process, as provided by law for the attachment and sale, under process, of the shares of capital stock of private corporations: Vt. 3345. See § 8145.

The rolling stock and all other movable property belonging to any such corporation shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals: W.Va. 54,51; Tex. 4259; Ill. 114,21.

So of its real property: Tex.

And no such property shall be exempt from execution and sale: Tex. 4259.

When the property or person of another is injured through the default of a railroad corporation, its agents or employees, the cars, engines, and other property which at the time of such injury are subject to use in the running and management of said road, and which have at any time been owned by said corporation, shall be held to be the property of the corporation, for the purpose of furnishing indemnity for such injury, and may be attached and levied upon as such at the suit of the party injured: Vt. 3443.

Cars and engines may not be attached within forty-eight hours of departure: S.C. 1524. See also Attachment, in Vol. III.



§ 8873. **Execution.** Whenever any judgment is rendered against any railroad company, execution shall issue thereon, and be levied and collected as in other civil causes, except that when the road-bed, track, franchise, and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire road-bed, track, franchise, and chartered powers and privileges of such company shall be levied upon and sold : Tex. 4262.

The franchises of railways and rights to redeem mortgages may, at the option of the creditors, be sold as in § 8311, or taken on execution : Me. 76,46.

A judgment against any railway corporation for any injury to any person or property shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed executed (1) since the fourth day of July, A. D. 1862 : Io. 1309.

(2) Thereafter : Kan. 23,104.

(3) After the cause of action arose : S.C. 1528.

§ 8874. **Evidence.** In all actions against railroad companies for damage done to persons or property, proof of injury inflicted by the running of the locomotives or cars of such company shall be *prima facie* evidence of the want of reasonable skill and care on the part of the servants of such company in reference to such injury : Miss. 1059. See §§ 8862-3.

§ 8875. **Damages.** And upon the affirmance of or the dismissal of an appeal from a judgment for money rendered against any insurance or railroad corporation or company, or against any corporation not created by or organized under the laws of the commonwealth of Kentucky, ten per centum damages on the amount of the judgment appealed from shall be awarded against the appellant, although such judgment be not superseded : Ky. 1888, April 19.

A person having a claim upon a railroad for overcharge or injury, or loss of merchandise or damage by delay or injury to the person, or refusal to transport or deliver persons or property, shall give written notice to the president or treasurer or superintendent of the corporation, delivered to any depot master fourteen days before suit ; and if the complainant upon suit recover more than the amount, if any, tendered by the corporation, he shall also recover reasonable compensation for the services of his counsel in addition to actual damage ; and if less amount is recovered, a similar allowance shall be made to the corporation, such allowance to be taxed in addition to the parties' costs : R.I. 158,22.

§ 8876. **Miscellaneous Suits.** Provision is made for the enforcement of contracts of railways with municipal corporations : Io. 1312.

In case of refusal by the railway so to do, the municipal corporation may have mandamus : Io. 1313.

Or specific performance in equity : Io. 1314.

And may obtain an injunction : Io. 1315.

§ 8877. **Limitation of Suits.** No action can be brought against a railroad for any penalties accrued under this act, unless within two years after the offence or cause of action : Pa. R.Rs. 93.

## Art. 888. Foreign Companies.

§ 8880. **Powers in other States.** Any railroad corporation heretofore or hereafter organized, pursuant to any law of this state, may exercise all its rights, franchises, and privileges in any other state or territory of the United States, under and subject to the laws of the state or territory where it may exercise the

same : Minn. 2540 *amt.* ; Wis. 1830 ; Kan. 23,115 ; Neb. 1,16,115 ; Wy. 1890,18 ; Ga. 1689(r) ; Fla. 39,38.

And may accept from any other state or territory and use any additional or other powers or privileges applicable to the carrying of persons and property by railway or steamboat in said state or territory, or otherwise applicable to the doings of said corporation in said state or territory : Wis. 1830.

And for that purpose may build, buy, lease, or consolidate, in the manner provided in Art. 872, with any railroads in such adjoining state and operate the same, and may own such real estate and other property in such adjoining state as may be convenient in operating such road : Mo. 1887, Ex., p. 10 ; Kan. 23,115 ; Ark. 5516. See also Art. 872, 873.

A corporation now existing, or which may hereafter be organized, for the building, constructing, and operating a railroad, has authority, for the purpose of extending its line, or forming a connection, to acquire, hold, and operate a railroad without the state : Ala. 1587.

§ 8881. **Railways of other States.** Railroads organized in other states (owning or operating a line in this state, Io.) may extend and build branches in the state and possess all powers and liabilities, including the right to sue and be sued, of railways organized in the state, (1) upon filing a copy of the articles of incorporation or the general law of the state that incorporated it : Io. 1880,128 ; W.Va. 54,30 ; Ark. 5516 ; Wy. 1890,18 ; Fla. 1889,3906.

(2) Upon merely filing location : Dak. 1879,46,27 ; Wash. 1890, p. 528 ; Ida. 1891, p. 126 ; Mon. G. L. 702, Oka. 1052.

(3) Upon complying with the law as to foreign corporations generally (§§ 8402, 8403) : Ore. 3293. And see also §§ 8711, 8712.

(4) Any railroad company organized under the laws of other states is hereby authorized, upon being incorporated in this state as hereinafter provided, to build and extend its road into, through, or across the state, and such railroad company shall have and possess all the powers, franchises, immunities, and privileges, and be subject to the same liabilities, as railroad companies organized and incorporated under the general laws of this state : Minn. 2557 ; Neb. 1,72,2,1 ; Ark. 5516.

Any railroad company duly incorporated under the laws of any state may extend, construct, maintain, and operate its railroad into and through this state, and for that purpose shall possess and exercise all the rights, powers, and privileges conferred by the general laws of this state upon railroad corporations organized thereunder, and shall be subject to all the duties, liabilities, and provisions of the laws of this state concerning railroad corporations as fully as if incorporated in this state : Mo. 2568 ; Ark. 5516 ; Cal. 1880,21.

Foreign railroad corporations operating roads within this state shall have the same rights for the purposes of operating, leasing, or uniting with other roads as if created by the laws of this state : N.H. 156,44.

Railroad corporations created by the laws of other states shall have all the rights and privileges as regards connecting roads, under the three preceding sections (§§ 8724, 8725), of corporations created by this commonwealth : Mass. 112,219.

When any foreign railroad which has been doing business as lessee of any railroad in the state refuses to discharge a judgment against the leased road for damages to the property of any person by the misdoings or neglect of such foreign company or its servants, which judgment belongs in equity to such foreign company to pay, the supreme court on petition may compel payment thereof : Me. 51,58.

And the judgment creditor has an action on the case against such foreign company : Me. 51,59.

When a railroad created in another state has, by any law of this state, been authorized to hold property and exercise franchises therein, the directors of such company elected in another state may hold their meetings and exercise the powers of the company so far as it may be necessary within this state : N.J. R.Rs. 63.

Railroad corporations now or hereafter existing by or under the laws of another state, any part of whose route, whether acquired by lease or otherwise, shall lie within this state, or who shall have been or hereafter shall be authorized to exercise any franchises within this state, shall be deemed corporations of this state for the purpose of being sued or proceeded against, if insolvent, in the same manner and to the same extent as if organized originally therein ; and no suit of foreign attachment shall be brought against any such corporation : N.J. R.Rs. 71.

Any railroad corporation organized under the laws of another state, but having a route and exerting franchises within this state, shall be governed by such rules, regulations, and arrangements as shall be made and adopted at or under such organization, not repugnant to the laws and constitution of this state : N.J. R.Rs. 80.

Any railroad company, incorporated under the laws of Ohio or Illinois, with its terminus at the boundary of either state, may continue its road into this state so far as may be necessary to form connection with any road already built therein, and may for such purpose purchase and hold necessary real estate : Ind. 3994.

Any railroad existing under the laws of an adjoining state, and owning and operating a railroad therein, may extend such railroad into this state, but to the distance of twenty-five miles only, upon duly filed location with the secretary of state, and thereupon have the powers, etc. of railroads within the state ; provided that it shall not remove any suit commenced by a citizen of this state into the United States court ; provided also that such extension shall be made within two years from this act : Wis. 1857a.

It must keep an office in the state, where process may be served : Wis. ; Ark. 5525.

It shall be competent and lawful for any railroad company heretofore incorporated or organized, or which may hereafter be incorporated or organized under the laws of an adjoining state, and which shall have extended its railroad into this state, or have become a corporation of this state under the laws thereof, to mortgage, lease, or sell that part of its railroad, and the property, rights, privileges, and franchises connected therewith, situated in this state, to any railroad in this state, and the railroad company making such purchase shall thereupon become vested with all the property, rights, privileges, and franchises of the company making such sale, and pertaining to the said railroad so sold, and shall be authorized to locate, construct and complete, maintain and operate the railroad thus purchased, and may receive, hold, and convey all municipal aid, endowments, and property of any kind whatsoever, upon complying with the terms and conditions upon which the same were to be had, as fully and to the same extent as the railroad company making such sale could have done had no such sale been made : Neb. 1,72,II,2.

Any railroad company heretofore incorporated or organized, or which may be hereafter incorporated or organized under the laws of an adjoining state, and which shall have extended its railroad into this state, or under the laws of this state shall have become incorporated and authorized to construct and maintain a railroad within this state, may mortgage or lease, sell, or convey the whole or any part of its railroad situated within the state, and the rights, privileges, and franchises connected therewith, and other property pertaining thereto, to any person or persons, on such terms and conditions as may be agreed upon, and the person or persons making such purchase, and their associates, may become a body corporate under the laws of this state in the manner prescribed for the creation and organization of railroad companies in this state ; and on the organization of such corporation it may take, receive, and hold the railroad and property so purchased by said corporators, and shall have, possess, and enjoy the

same, and all the rights, privileges, and franchises connected therewith, and held and possessed by the company making such sale, and shall also have all the rights, privileges, and franchises of railroad companies organized under the laws of this state, with full power and authority to construct, complete, maintain, and operate the railroad thus purchased, receive, hold, and dispose of all endowments, grants of land, municipal or individual aid granted to said company making such sale, or to which said company was or might have become entitled upon compliance with the terms and conditions upon which such endowments, grants, donations, or aid were to be had; and the railroad company so organized may, under the laws of this state, consolidate its stock and property with any other railroad company upon such terms and conditions as may be agreed upon; provided, however, that no sale or purchase shall be made of railroads situated within this state by companies without this state, or consolidations effected as provided in this act, until the terms of such sale or consolidation shall have been approved by a majority of the stockholders in interest, in person or by proxy, at the annual or special meeting, of which due notice shall be given by publication or in writing to all the stockholders in interest, or the same be approved by the written consent of a majority of the stockholders in interest, filed in the office of said respective companies: Neb. 1,72,II,3.

That all contracts and agreements made by any railroad company prior to such transfer, lease, consolidation, or mortgage, shall be binding on the assignees, lessees, or mortgagees of such company, and that the rights of any stockholders, or parties entitled to stock therein, shall in no way be impaired by such transfer, lease, consolidation, or mortgage: Neb. 1,72,II,4.

When any company or persons shall have purchased any railroad, or two or more railroads are consolidated, as contemplated by the provisions of this act, such companies or persons so purchasing shall keep each and every railroad line that may come into their possession by such purchases in good running order, with sufficient rolling stock to transport the freight and passengers. They shall not discriminate against the business with either or any of said railroad lines, either directly or indirectly, by the detention of freights or passengers, or charging more for freight or passage than is charged in proportion upon any other railroad line under the control of said company or persons: Neb. 1,72,II,5.

Any railroad company which has been organized under the laws of the states of Iowa, Kansas, or Missouri, and which has heretofore extended its line of railroad in this state, or built any portion of its line of road in this state, and has filed a true copy of its original articles of incorporation in the office of the secretary of state of this state, is, from the time of filing said copy of its original articles of incorporation as aforesaid, hereby declared to be a legal corporation of this state, and entitled to all the rights, privileges, and franchises of railroad companies, organized under and pursuant to the laws of the state of Nebraska: Neb. 1,72,II,6.

Every railroad corporation doing business in this state under the provisions of this section, or under charters granted or laws passed by the state of Virginia, or this state, is hereby declared to be, as to its works, property, operations, transactions, and business in this state, a domestic corporation, and shall be so held and treated in all suits and legal proceedings which may be commenced or carried on by or against any such railroad corporation, as well as in all other matters relating to such corporation. Every such corporation which shall do business in this state, without having complied with the provisions of this section, shall be guilty of a misdemeanor: W.Va. 54,30.

No railroad of another state shall do business in this state as lessee or otherwise, or maintain any action, until it file a writing with the secretary of state accepting the provisions of "this section" (see Art. 840): W.Va. 54,30.

Railroad corporations of other states may operate within the state, provided the directors record in the county clerk's office of some county through which the road runs

an order authorizing its agents to contract in the name of such corporation, and agreeing that the citizens may sue such corporation in any court of competent jurisdiction within the state; and service of process upon such agent shall be deemed valid upon the company: Ky. 43,1 & 2.

Such corporation failing to comply with the foregoing provision, or that shall thereafter cause the suit of a citizen of the state to be removed from the state court to the United States court, shall be prohibited from doing business in this state, and contracts thereafter made shall be null and void: Ky. 43,3.

It is the duty of the attorney-general thereupon to institute proceedings to suspend the powers of such corporation: Ky. 43,4.

All such corporations shall be deemed common carriers, and shall not discriminate in carrying freight for or against any individual or company; but shall transport so far as its rolling stock and equipments will permit all freight that may be offered upon payment of the rates allowed by law or the charter of such road, and individuals or companies may furnish necessary cars if the road is not supplied, and it shall carry freight in such cars and return them with convenient speed: Ky. 43,5.

And are liable for actual damages and fifty per cent in addition for a failure to comply with the preceding provision: Ky.

Railroads of another state intersecting the state line at a point within five miles of any railroad in the state are granted the right of way to it, not exceeding such five miles: Tenn. 1237.

Any railroad corporation created by the laws of any other state shall be authorized and empowered to extend its railroad into this state a distance of not exceeding five miles from the point of its entrance into this state, for the purpose of reaching a terminal point: Tenn. 1887,160,1.

Such corporations may acquire the right of way by purchase, or by gift, or by condemnation, according to the laws of this state: Tenn. 1887,160,2.

Provided, they shall first apply for and receive a charter in this state: Tenn. 1887, 160,3.

Any railroad company incorporated by or under the laws of any other state, desiring to continue its line of railroad into or through this state, may, for the purpose of acquiring the right to build its line of railroad, lease or purchase the property, rights, privileges, lands, tenements, immunities, and franchises of any railroad company organized under the laws of this state, which said lease or purchase shall carry with it the right of eminent domain: Ark. 5530.

Before any such lease or sale shall be made by any company organized under the laws of this state, two thirds in amount of the capital stock issued shall, at a meeting of the stockholders thereof, of which sixty days' notice shall be given, assent thereto: Ark. 5531.

Any railroad company formed under the laws of another state may assume any debt or liability of any railroad company whose property it may have purchased or leased, and make such adjustment or exchange of bonds, stock, or other evidences of debt with any bondholder, stockholder, or creditor of such company leasing or selling its road as to said foreign company may seem expedient, and as may be acceptable to such stockholders, bondholders, or creditors, and may for such purposes issue stock, bonds, or other evidences of debt for the purposes aforesaid, not inconsistent with the constitution and laws of this state, upon the property so acquired by purchase, lease, or otherwise. In all other matters said foreign railroad company shall be subject to all the provisions of all acts in relation to railroads, the liabilities and forfeitures thereby imposed, and may sue and be sued in the same manner as other railroad corporations, and subject to the same service of process, and shall keep an office or offices in said state, as is required, and an agent or agents, upon whom process may be served: Ark. 5532.

In the case of the leasing of any line of railroad incorporated under the laws

of this state by a foreign corporation, such leasing shall be upon the fundamental conditions:—

1. That such foreign corporation shall enter into an agreement in writing with the state of Oregon, duly executed by said corporation, to be signed by its president and attested by its secretary, which agreement shall be filed with the secretary of state of the state of Oregon, whereby and wherein said foreign corporation shall agree that in all suits or actions by and between said foreign incorporation and a citizen or citizens of this state during the continuance of such lease shall be prosecuted or defended to a final determination in the courts constituted by the laws of this state, excepting in cases where such action or suit shall be commenced in or removed to the federal courts by a citizen of this state, and upon the failure to comply with the terms of such agreement by such foreign corporation, such lease shall utterly determine and be rendered null and void at the option of the legislative assembly of the state of Oregon.

2. That the state of Oregon reserves to itself, through its legislative assembly, and in such manner as it shall determine, the right, power, and authority to prescribe the rate to be charged for the transportation of persons and property on such leased lines, and also to prescribe and make such police regulations for the government of such roads as it may from time to time determine: Ore. 3293.

Whenever any railroad of this state shall permit its railroad to be used or operated by any other person or corporation, whether by contract or otherwise, in any suit against the person or corporation so using or operating such railroad, it shall be sufficient service of process to serve a copy of the same on any depot agent or person in charge of any depot along the line of the railroad so used: Ala. 1887,28.

Service as on roads within the state: Ark. 5524.

Such company may have an office in this state for the transfer of stock, and their officers and agents may transact business in this state: N.J. R.Rs. 64; Neb.; Ark. 5523.

A corporation of another state, being lessee or extending its road into this state, must establish an office at some point of the line leased, etc., within the state, where legal process may be served: Mo. 2568.

If a railroad of another state lease or extend its road within this state, such part as is within the state shall be subject to taxation and to all the regulations of law covering railroads in this state: Mo. 2568; Ark. 5521. See §§ 8720, 8722.

**§ 8882. Companies in Two States.** A railroad corporation chartered by the concurrent legislation of this and other states shall, as regards any portion of its road lying within this commonwealth, be entitled to all the benefits and be subject to all the liabilities of the railroad corporations of this commonwealth: Mass. 112,4.

If the part of any railroad situated within this state, a part of which is situated in another state, shall become vested in a corporation of such other state, which also acquires the part in such other state, such corporation may exercise its powers and franchises within this state so far as it has such capacity under the laws of the state creating it: Ind. 3939.

In case a portion of any railroad situated within this state (a part of which is situated in another state) shall become vested in a corporation of another state, the said corporation may exercise and enjoy within this state, and also in such other state, for the purposes of such railroad and its business, all the rights, powers, faculties, franchises, and privileges in this act contained; and its mortgages and trust deeds shall operate and be binding as therein specified, and all sales under the same shall be valid and effectual: Ind. 3950.

If any part of such indebtedness (§ 8640) has been incurred in consequence of the construction, maintenance, repair, removal, or operation of any part of such railroad which is not in this state, or for equipment of such part, the railroad commissioner

shall ascertain and determine, in such manner as he shall think just and equitable, how much of its indebtedness is justly chargeable to that part of said railroad that is in this state, and how much interest shall have been paid by such corporation, during such year ending on the thirty-first day of the next preceding December, on that part of such indebtedness which is justly chargeable to that part of said railroad that is in this state : Wis. 1795.

Each such railroad corporation operating in this and other states shall designate some office within this state as its principal office, and inform the railroad commissioner of such selection and designation, and such corporation shall keep in such office a list of its stockholders, together with a statement of the number of shares of its stock held by each of them respectively, as shown by its books, which list shall be corrected as often as three times in each year at the times of closing its stock-books, if it shall so often close them, and if it shall not so often close them, then such list shall be corrected once at least in each four months. A failure or refusal to comply with any of the foregoing provisions shall be cause of forfeiture of its franchises : Wis. 1750.

Any railroad corporation may, in the location of its railroad, pass out of this state into any other state, with the assent of such state, and back again into the state, as often as may be found necessary : W.Va. 54,34.

**§ 8883. Special Cases.** In Minnesota special provision is made for the extension of Illinois and Iowa railroads into the state : Minn. 2559,2560. See § 8711.

**§ 8884. Railroads in Foreign Countries. Organization.** Fifteen or more persons, a majority of whom are inhabitants of this commonwealth, may associate themselves together by articles in writing, with the intention of forming a corporation to construct and operate a railroad, or railroad and telegraph, in any foreign country, but in accordance with the laws of such country ; and, upon complying with the provisions of section two hundred and twenty-seven, shall, with their associates and successors, be and remain a corporation for the purpose aforesaid, with the powers necessary and incident thereto, and with such powers and privileges, and subject to such duties, liabilities, and restrictions as to the location, construction, maintenance, and operation of its railroad and telegraph, and the transfer of its property by mortgage, lease, or otherwise, as may be fixed by such country : Mass. 112,225.

The articles of association shall set forth the name of the corporation, the names of at least nine persons to act as a board of directors until others are chosen, the amount of its capital stock, and, as far as may be practicable, the termini of the railroad and telegraph to be built. Each associate shall subscribe to the articles his name, residence, post-office address, and the number of shares of stock which he agrees to take ; but no subscriber shall be bound to pay beyond ten per cent of the amount of his subscription unless a corporation is duly established : Mass. 112,226.

"Such corporation shall be subject to the provisions of the first division of section forty-five, and sections fifty-one, fifty-five, fifty-six, fifty-seven, seventy-five, and to the four preceding sections, and to section forty-six of chapter thirteen, and shall not be required to make returns under section thirty-eight of said chapter : " Mass. 112,229.

It may increase and reduce its stock : Mass. 112,228.

Provision is made for the formation of corporations to construct and operate railroads in a foreign country, with powers to receive concessions and privileges, and hold property in such foreign country, etc. : N.Y. 1885,369 ; 1890,565,17,18.

Such companies must maintain a principal office in the state, and are subject to taxation upon the amount of real or personal property owned by them within the state : N.Y. 1890,565,19.

## CHAPTER V.

OF DISSOLUTION, FORECLOSURE, AND REORGANIZATION OF  
RAILROAD COMPANIES.

**Art. 890. Receivers.** Compare also Arts. 836, 838.

§ 8900. **Grounds for Appointment.** (See also § 8922.)

**Abandonment.** (1) "Whenever any railroad, after commencing to receive tolls, neglects or refuses regularly to run trains upon and to operate its road for the transportation of passengers and freight for sixty days at any one time:" Me. 51,47.

(2) If any railroad company in this state has failed or may hereafter fail or neglect to run daily trains on any part of its road for the space of ten days, then the chancellor of this state, upon petition of any citizens of this state, and due proof of the facts, shall speedily appoint a receiver: N.J. R.Rs. 160; Suppl. id. 42.

**Insolvency.** (1) "Whenever any railroad has become insolvent, or failed for ninety days after the same becomes due to pay the principal or interest on any mortgage on the property or franchises of such company, it shall be lawful for the chancellor, upon the application of any creditor, mortgagee, or stockholders of such company, to appoint a receiver or receivers, or three trustees:" N.J. R.Rs. 57.

(2) After an execution on a judgment against any railroad, and no property found, the plaintiff therein, or his assignee, may institute an equitable action against said defendant company to place its road and property in the hands of a receiver; and the said court, upon a petition showing said return and the failure to pay said judgment upon the service of summons upon said company, shall appoint some suitable person as receiver of said company, and as such to take possession and control of all the road and property belonging to or operated by said defendant, including all rolling stock thereof. Said receiver shall operate said road until he shall have collected a sum sufficient to pay off the said plaintiff's judgment debt and costs, and the costs of the receivership, when he shall surrender the road and property to the defendant: Ky. 1890,1039,1.

**Dissolution.** Whenever the charter of any railroad or canal corporation shall be repealed, or any such railroad or canal corporation shall be dissolved in any manner whatever, the chancellor, upon the application of the attorney-general by petition in the name of the state, shall take charge of all the estates, effects, and franchises of such corporation, and proceed to settle its affairs in conformity to the provisions of the act to which this is a supplement, and the provisions of any supplement thereto; and if justice and equity shall require, the chancellor may order and decree the estates, effects, and franchises of such corporation to be sold at public sale: *provided*, that no franchise of immunity from taxation, and no contract wholly or partially exempting such corporation from taxation, shall be sold at such sale, or in any other manner whatever, either expressly or by implication, but the purchasers of such effects, estates, and franchises shall acquire and hold the same subject to such taxation as the state may impose thereon by law: N.J. Suppl. Corps. 81.

**Misconduct.** Or (a receiver may be appointed) if any railroad company doing business in this state shall charge an extortionate rate for the transportation of any freight and passengers, or refuse to draw or carry the cars of any other railroad company over its line as required by the laws of this state: Tex. 1098i,1.



§ 8901. **Process.** Receivers are appointed by the supreme court on application (1) of the railway commissioners : Me. 51,47.

(2) Of any ten citizens residing in any county through which the railroad extends : Me.

If at the hearing the allegations in the petition are found to be true, and if in the opinion of the court public necessity and convenience require it : Me.

The several courts of common pleas of this commonwealth shall have and exercise all the powers of a court of chancery in all cases of or for enforcing rights under mortgages of the property or franchises of any railroad, canal, or navigation corporation, where such property or franchises, or any part thereof, shall be situate or exercisable within the limits of this commonwealth, and belonging to or exercisable by any domestic corporation, or any foreign corporation under permission granted by the laws of this commonwealth : Pa. Equity, 31.

So, the district court of any one county : Kan. 23,119.

§ 8902. **Who may be Receivers.** "Some suitable person or persons : " Me. 51,47.  
"Some other railway corporation : " Me.

§ 8903. **General Duties.** (See § 8364.) The receiver must immediately take possession of the road and appendages : Me. 51,48 ; N.J. R.Rs. Suppl. 42.

He shall diligently proceed to refurnish and repair the railroad, its rolling stock, and other appendages : Me. 51,48.

And to operate the same for the accommodation of the public : Me. 51,48 ; N.J.

Receivers have the same authority to receive tolls and manage the railroad, and are subject to the same restrictions, as are enjoined by the charter and the laws upon the railroad itself : Me. 51,48.

He shall have and exercise all the powers and authority that it is lawful for receivers or trustees to exercise under the "act concerning corporations : " N.J. R. Rs. 57.

Whenever any incorporated railroad company in this state shall become insolvent, and the property of such company shall have passed into the hands of a receiver by order of the chancellor, in accordance with the act to which this is a supplement, the receiver shall and he is hereby empowered to operate said railroad for the use of the public, subject at all times to the order of the chancellor; and all expense incident to the operation of said railroad shall be a first lien on the receipts, to be paid for before any other encumbrance whatever : N.J. Corps. 106.

All expenses incurred thereby shall be a first lien on all the earnings thereof prior to any other claim, and the surplus, if any, be distributed as the chancellor may direct : N.J. Suppl. R.Rs. 42.

When a receiver has been appointed of a railroad corporation created by the laws of another state which has acquired railroad property in this state, and is in actual possession, having duly filed his bonds, he may operate the portion of the road within the state upon filing with the clerk of the county in which the railroad is situated a copy of his order of appointment, bond, and other papers, with the approval of a chancellor, on due notice by advertisement; and shall thereupon become the receiver of that portion of railroad in this state, with the rights and privileges belonging to the original company, and subject to the jurisdiction of the court of chancery in this state as if originally appointed thereby : Vt. 3480.

When a line of railroad, the whole or any part of which lies within the limits of this state, has been placed, by order of court, in the hands of a receiver, who has taken charge of and is operating the same for the purpose of carrying passengers and freight, and doing such other things as ordinarily belong to the running and management of railroads, such receiver may, in his official capacity, sue or be sued in the courts of this

state without leave previously granted ; provided, however, that no person shall act as such receiver unless he is a resident citizen of this state : O. 3415.

Actions may be brought against the receiver of a railroad in any county through or into which the road is constructed, and service of summons may be had upon the receiver, or upon the superintendent of the road, or upon any ticket or freight agent who is in the employment of or acting for the receiver ; but no service made upon the ticket or freight agent shall be valid unless the office or place of business of such agent is in the county where suit is brought : O. 3416.

The earnings of a railroad in the hands of a receiver, and other money which comes into his hands, shall be applied first to costs of suit and operating expenses, including all materials and supplies procured by him therefor, and liabilities incurred by him in such operation and management, and all judgments recovered against the receiver for injuries to person or property, or wages of employees, or work done, or materials furnished, shall be a lien on the funds in his hands : O. 3417.

When the line of road lies wholly within this state, the receiver must deposit such moneys as the court may direct in some place within the state ; and if any portion lie in another state, he must deposit at least such share of the funds within this state as is proportionate to the value of the property of the company therein : O. 3418.

When a line of a railroad operated by a receiver lies wholly within this state, all money which comes into the hands of the receiver, whether from operating the road or otherwise, shall be kept and deposited in such place within this state as the court may direct, until properly disbursed ; but if any portion of the road lies in another state the receiver shall be required to deposit in this state at least such share of the funds in his hands as is proportioned to the value of the property of the company within this state : Tex. 1467.

**§ 8904. Receiver's Certificates.** If the road, its track, bridges, rolling stock, and other appendages, shall be found to be out of repair, or insufficient in amount for safe and successful operation, and the earnings are not sufficient, the receiver may borrow money to the extent of five thousand dollars a mile for such improvements, at a rate of interest not exceeding eight per cent, the principal payable within twenty years : Me. 51,49.

The lien thus created on the franchises or property takes precedence of all mortgage bonds, stock, or other indebtedness of any kind then existing or after created : Me. 51,49.

When a receiver has, under order of court, made improvements or purchased rolling stock or machinery, and made other improvements whereby the value of the property has been increased, or has extended such road or acquired any property in connection therewith, and has paid for the same out of the current receipts, then, if there be any floating debts, the corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver ; and if there are any liens of any kind upon the property and it is sold under order of court to foreclose such lien, it is the duty of the court to detain in the hands of the clerk money to the full value of the improvements made by said receiver out of the purchase or sale, and pay the same over to any person who has a debt or judgment against such corporation : Tex. 1887, 131,14.

Receivers are required to rebuild bridges within six months and may issue receiver's certificates therefor : Ore. 4040.

**§ 8905. Bond and Compensation.** (See § 8361.) A receiver must give bond in a reasonable sum, with securities satisfactory to the court : Me. 51,47.

The court determines a receiver's compensation : Me.

If the receivers and corporation are unable to agree upon the amount due the receivers, the question is referred by order of court to the railroad commissioners, whose decision is final : Me. 51,51.

§ 8906. **Revocation of Authority.** Any justice of the supreme court in the county where the original petition of the railroad or its owners was filed, after reasonable notice to the receiver, may revoke his authority, and restore the possession and control to the corporation upon their paying the principal and interest of all receiver's loans, together with the sum due receivers for their services and all expenses incurred during the receivership in operating and repairing the railroad over and above the earnings : Me. 51,50.

Provided that such corporation or its owners give bonds to the state in sum and surety as the court orders, conditioned to operate and keep in repair the road to the satisfaction of the railroad commissioners for five years following the order : Me. 51,50.

The court may fill vacancies in the office of receiver and issue all orders or decrees necessary at any time to aid them in their trust : Me. 51,52.

§ 8907. **General Provisions.** Questions of law arising under receiverships may, on motion of either party, be at once certified by the presiding justice, to be argued in writing by both sides within thirty days, and considered and decided by the court as soon as may be : Me. 51,53.

§ 8908. **Dissolution of Corporations.** A company which has been in existence for three years and has not commenced construction, or whose road has been abandoned for three years, may be dissolved by a vote of two thirds of its stockholders at a special meeting : O. 3363. See also § 8330.

When a railroad has no bonded debt, and does not receive money for operation sufficient to meet expenses, or which has not commenced or fully completed the construction of its railroad, it may surrender its franchise and dissolve the corporation upon filing a certificate with the secretary of state that the majority of stockholders so wished : N.J. Suppl. R.Rs. 75-77.

"Nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers, for any liabilities which shall have been previously incurred : " Mich. 3395. See § 8503.

"It shall be unlawful for any such railway company, after having taken a transfer of any case whereby, under the provisions of this act, its right to do business in this state shall have terminated, to run any locomotive, car, or train of cars on any railway in this state, and it shall be liable for all damages done by it in the performance of said unlawful act to any person or property : " Minn. 3156. See § 8414.

Any corporation formed under this act may be dissolved by judgment of the district court for the county in which its principal place of business is situated, upon its voluntary application for that purpose : N.M. 2692.

## **Art. 891. Trustees' and Bondholders' Rights.**

§ 8910. **Trustees in Possession.** No trustees or assignees of any railroad mortgage, who have the railroad in their charge, shall, as such and without their own default, be personally responsible for any damage, by collision or force, occurring to any passenger or freight upon said railroad : N.H. 161,6 ; Pa. R.Rs. 127.

In case of such damage, the company assigning or mortgaging the railroad shall be liable ; and the assets in the hands of the trustees shall be holden for such damage, as part of the expenses of the trust, in preference to the claims of the general creditors of the company : N.H. 161,7.

If they so determine, the trustees shall take possession of such road and all other property covered by the mortgage, and have all the rights and powers, and be subject to all the obligations, of the directors and corporation of such road, and may also prosecute and defend suits in their own name as trustees : Me. 51,88.

They are not personally liable, except for malfeasance or fraud : Me. 51,89 ; R.I. 178,11.

Or for any contracts made by them as such trustees: R.I.

When all overdue bonds and coupons secured by the mortgage are paid, they shall surrender the road and other property to the parties entitled thereto: Me. 51,89.

The trustees or other parties under contract with them operating a road, and all corporations formed in the mode hereinbefore provided, have the same rights, powers, and obligations as the old corporation had by its charter and the general laws, subject to amendment, alteration, or repeal by the legislature, and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter: Me. 51,106.

The provisions of this title which impose upon a railroad corporation any duty, obligation, or liability shall apply to persons having the possession, control, or management of a railroad, or of the engines and cars running thereon, as lessees, assignees, trustees, or in any other capacity: Vt. 3300. See also § 8500.

**Possession by Corporation after Default.** When a railway has made default in the condition of a mortgage so that the trustees are entitled to possession, the trustees, instead of retaining the actual possession, may contract with the corporation to retain for them the possession of and use and operate the property on its own responsibility, accounting with the trustees for the earnings and income, and paying over the net income periodically as far as by the terms of the mortgage may be necessary for the fulfillment of its conditions: Mass. 112,66.

Provided, that all liabilities incurred by the corporation or other party in operating the road under such contract shall be held as claims against and paid out of the income, in the same manner and to the same extent as if the property had remained in the actual possession of the trustees and been operated by them: Mass. 112,66.

And provided, that at a meeting of the bondholders or creditors under the mortgage, duly notified in two or more daily newspapers published in the city of Boston, and in one newspaper at least in each county through which the road is located, ten days before said meeting, a majority in amount of those present or represented vote in favor of such contract: Mass. 112,66.

§ 8911. **Jurisdiction, Removal of Trustees, etc.** The supreme court has jurisdiction as in equity in all matters arising under the preceding sections relating to trustees, mortgages, and their redemption and foreclosure; and in all such proceedings not otherwise specifically provided, the ordinary law of real estate trusts and mortgages may be applied: Me. 51,108.

The supreme judicial court shall have full equity jurisdiction, according to the usage and practice of courts of equity, of all cases arising under the three preceding sections, and of all questions arising out of railroad mortgages: Mass. 112,70.

So, the courts of common pleas: Pa. Equity, 31.

And may in a summary manner remove a trustee under a railroad mortgage, whether such trustee is in possession of the railroad or not, and appoint a new trustee in his stead, whether such trustee is elected as provided in said sections or not: Mass. 112,70.

A trustee of a railroad mortgage may be removed by the chancellor upon petition, notice, and hearing, made by five or more bondholders to an amount of not less than fifty thousand dollars, who deem the trustee unsuitable: Vt. 3454.

And thereupon a new trustee may be appointed and such other orders made as equity requires: Vt. 3456.

Either party may appeal to the supreme court: Vt. 3457.

Which has summary power to make all orders and decrees necessary to carry such trust into effect: N.H. 161,8.

§ 8912. **Meetings of Bondholders.** The trustees to whom any railroad has been assigned or conveyed in mortgage for the benefit of the creditors shall call a meeting of

the creditors whose claims are secured by such mortgage (1) once a year, to be holden at some place on or near said railroad, by publication in two daily papers published in Boston, and one paper in each county in which such railroad is located : N.H. 161,1.

(2) Upon neglect to pay coupons or principal for ninety days after due, which is made a breach of the mortgage : Me. 51,86.

And trustees in possession must call an annual meeting (1) in the same manner as a stockholders' meeting : Me. 51,90 ; Mass. 112,67.

(2) In January, with notice in Boston and New York papers : Vt. 3453.

(3) In December, with notice in Boston and county papers : Mass.

Upon failure to call such meeting, five bondholders or creditors to the extent of ten thousand dollars may call it, in January : Mass. 112,68.

If such trustees, on application of such creditors to the amount of one third of the whole sum secured, do not within fourteen days call such meeting, five or more such creditors, holding the like amount of claims, may call such meeting in the same manner : N.H. 161,2.

At such meeting, said trustees shall make a report of the state of the trust property, and of their proceedings and management in relation thereto, according to the usual custom of directors of railroads to the stockholders : N.H. 161,3 ; Vt. 3453.

Said creditors at such meeting may elect, by ballot, three or five trustees, being creditors, and a majority at least residents of the state : N.H. 161,4 ; Mass. 112,69 ; each creditor being entitled to one vote for each hundred dollars of his debt, and having the same right to vote by proxy as stockholders of railroads at their meetings : N.H. ; Me. 51,88 ; Mass.

They may determine whether the trustees of the mortgage shall take possession or not : Me.

They report to them the state of the property, the receipts, expenses, and the application of the funds. At such meeting the bondholders may fix the compensation of the trustees ; instruct them to contract with the directors of the corporation or other competent party to operate said road while the trustees have the right of possession, if approved by the bondholders at a regular meeting, otherwise not exceeding two years, and to pay them the net earnings thereof ; or may give them any other instruction that they deem advisable ; and the trustees shall conform thereto, unless inconsistent with the terms of the trust : Me. 51,90.

**§ 8913. Duties of Trustees.** They shall keep an accurate account of the receipts and expenditures of such road, and exhibit it, on request, to any officer of the corporation or other person interested : Me. 51,89.

They shall file the annual report (§ 8560) : R.I. 158,42.

They shall, from the receipts, keep the road, buildings, and equipments in repair, furnish such new rolling stock as is necessary, and the balance, after paying running expenses, shall be applied to the payment of any damages arising from misfeasance in the management of the road, and after that according to the rights of parties under the mortgage : Me. 51,89.

The trustees under a railroad mortgage or lessees of the railroad not resident in this state, who are in possession of a railroad, must appoint a person resident in the state to receive service of process : Vt. 3460.

A certificate of this appointment must be filed every year with the clerk of the county court of each county : Vt. 3460.

If no such appointment is made, service may be made upon a station agent or depot master : Vt. 3460.

When any railroad company shall have mortgaged its property, or any part thereof, to any person, in trust for the security of its creditors, or for the security of any class of them, and shall have made default in the payment of principal or interest due to

such creditors, any such creditor may prefer his petition to the superior court in any county in which such railroad or any part thereof is located, setting forth such fact, and praying that such trustee may be placed in the possession of such property for the benefit of such creditors; and such petition shall be heard and determined at the first term of the court to which it is returnable, unless continued for reasonable cause; and if the allegations therein are found true, such court shall decree that the said company and its president and directors, under a suitable penalty, shall surrender such mortgaged property to the trustee for the benefit of such creditors: Ct. 3573.

When any such trustee shall have taken possession of any property in pursuance of the provisions of the preceding section, or in pursuance of any authority contained in the mortgage or deed of trust, he shall take charge of and operate such railroad, or railroad property, for the benefit of the creditors for whom such trust was created, and shall not be personally liable for any cause or injury arising from the operation of such road, or while he may operate it, except for his wilful mismanagement, or for any contracts made by him as such trustee; but all such property shall be liable for the acts and proceedings of such trustee, in the execution of his trust, to the extent of the interest of the creditors for whose benefit he may act; and any proceeding for the purpose of making such property liable shall be brought against such trustee, describing him as such: Ct. 3574.

The trustee, upon taking possession of such property, shall make an inventory of all which may come into his possession, under oath, and lodge it for record in the office of the secretary of this state; and if any other property shall, from time to time, be discovered by him, he shall make and lodge a like inventory, under oath, as aforesaid: Ct. 3575.

The trustee shall, from time to time, while operating such road, file his account, quarterly, in the office of the secretary of this state, of all moneys received or disbursed by him in the course of his agency; and may proceed, at his discretion, in the superior court, in any county in which such railroad or any part thereof is located, to foreclose said railroad company, and all subsequent encumbrances for the use of the bondholders: Ct. 3576.

If such trustee shall neglect or unnecessarily delay to perform his duties, any creditor, represented by such trustee, may apply to any superior court aforesaid for the removal of such trustee, which application shall be heard at the first term of said court; and upon such facts being found true, such court may remove the trustee from his office, and appoint another in his stead, and may, upon the application of any such creditor, remove the trustee, and fill the vacancy: Ct. 3577.

Nothing in the five preceding sections shall affect any mortgage, trust, or lien upon the property foreclosed, which was created prior to the mortgage, trust, or lien under which such trustee may act; but the trustees for all such prior incumbrances may proceed, by foreclosure or otherwise, notwithstanding any act or proceedings by subsequent encumbrances or their trustees: Ct. 3578.

When any such railroad is in the possession of an assignee or trustee, he shall have the same rights, powers, and privileges as are conferred upon railroad companies; and all expenses and damages incurred by such persons so in possession, in good faith, to improve the lines of the railroads so in their charge shall be reimbursed to them from the earnings of such railroad while they have the possession thereof: Ct. 3579.

The expenses of operating such railroad or other property, including repairs and all other reasonable expenses of the trustee, and any damages incurred for any injury sustained during the time of his execution of said trust, and all claims secured by any prior mortgages or encumbrances, which shall have become payable before or during said time, and also a reasonable compensation to be allowed to the trustee by the superior court, shall be deducted from the earnings of the road before any part of such earnings shall be paid to the creditors: Ct. 3580.

**Art. 892. Sales and Foreclosure.**

§ 8920. **Sales without Foreclosure.** It shall be lawful for the receivers or trustees to sell or lease the canal, railroad, or turnpike belonging to such company, together with all the chartered rights, privileges, and franchises of such company; and the purchaser or purchasers, lessee or lessees of such work, chartered rights, privileges, and franchises, shall thereafter hold, use, and enjoy the same during the whole of the residue of the term limited in the charter of such company, or during the term in such lease specified, in as full and ample a manner as the stockholders of such company could or might have enjoyed the same, subject, however, to all the restrictions, limitations, and conditions contained in such charter; and upon filing in the office of the secretary of state, within six months after such sale or lease, a certificate that they accept the charter of the company whose property has been sold or leased, under some corporate name different from that of the said company, such purchasers or lessees shall become a corporation under the name so specified, with all the powers, rights, privileges, and franchises of the former company; the lessees or purchasers, or corporation formed by them as aforesaid, shall hold and enjoy the same free and clear of all debts, claims, and demands of creditors, mortgagees, or stockholders, who shall look only to the fund arising from such lease or sale, which money, as collected shall be paid into the court of chancery, but where such property is subject to a mortgage the chancellor may, with the consent of the plaintiff, or without such consent if the principal is not due, direct a sale or lease to be made subject to the lien of the mortgage: N.J. Suppl. Corps. 76.

The real and personal property, road-bed, right of way, fixtures, and franchises of a company in this state which has not completed, nor conveyed by a deed of trust or mortgage, any part of its road, and which is insolvent, and whose property is in the hands of a receiver appointed by a court of competent jurisdiction, may be sold at judicial sale; and the title thereto, with all the rights, liberties, faculties, and franchises, shall pass by such sale, and vest in the purchaser thereof, as fully as the same had been possessed, exercised, and enjoyed by such company: O. 3420.

The receiver must petition court for such sale, with proper description and statement of assets and property, and give six weeks' notice by publication in each county where the road-bed is situated: O. 3421.

The court, on proof of the publication of such notice, and on being satisfied that a sale is necessary for the payment of the indebtedness of the company, shall order the sale of such road, road-bed, rights of way, property, and franchises, upon such terms of payment as the court may deem proper, and shall issue its order to the receiver, commanding him that he cause the same to be appraised by commissioners, to be selected by the court, skilled in the construction and value of such road-beds as they may be called upon to appraise, having the qualifications of a freeholder, not less than three in number, and consisting of at least one from each county in which any part of the road-bed is situate; and such proceedings shall be had under such order as are provided by law in case of sales of real estate made by order of court in other cases, so far as the same may be applicable: O. 3422.

Before any such sale shall be made, notice thereof shall be given by publication, for six consecutive weeks, in some newspaper published and of general circulation in each of the counties through or in which such road is located, and also in some newspaper published and of general circulation in each of the cities of New York and Cincinnati, for at least thirty days prior to the day of sale; but the sale shall not be made for less than two thirds of the appraised value of the property and rights, unless, upon the same having been twice offered and not sold, the court, in its discretion, order a reappraisement: O. 3423.

When a sale is made, and reported to the court, if the court is satisfied that the same was fairly and properly conducted, in all respects, according to law and the order

of the court, it shall cause the same to be confirmed, and shall order the receiver to execute and deliver to the purchaser a deed of conveyance for the road, road-bed, rights of way, real estate, fixtures, and franchises so sold : O. 3124.

The proceeds of the sale, after paying the costs and expenses thereof, and the unpaid expenses of the trust against the company, shall be distributed *pro rata* among all the creditors of the company : O. 3425.

Whenever any railroad company coming within the provisions of this act shall sell or transfer its property, rights, or franchises to any other railroad company, it shall be the duty of such last named railroad company to complete the road so transferred to it, and put the same in complete running order, within three years after the time of such transfer ; and upon failure to do so, it shall be taken and held to have abandoned and forfeited the same : and any company organized as provided in this act shall succeed to and be invested with the same, as is herein provided : provided, however, that nothing in this act contained shall be regarded as a recognition of the right of two or more railroad companies to consolidate by voluntary agreement : Ind. 3986.

**§ 8921. Sales under Power.** It shall be competent and lawful for the trustees in any deed of trust or mortgage of and upon any railroad, in case of the inability of said company or its default in the payment of the principal or interest money secured thereby, in pursuance of any power of sale contained therein, to offer the same for sale, according to the power, and in pursuance of its terms, and on such sale to execute a deed of the premises sold : Mich. 3351.

Which said deed, duly executed, shall convey the title to the purchaser or purchasers, and authorize them to enter into possession and enjoyment thereof, as fully as may be provided in said mortgage or deed of trust : Mich. 3351.

Whenever a sale of the road-bed, track, franchise, and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power, the same shall be made at the time and place mentioned in the deed of trust or power, and in accordance with the provisions of the same, as to notice and in other respects ; and if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale : Tex. 4261.

**§ 8922. Sales under Foreclosure.** Foreclosure sales of a railroad may be ordered to be for the whole amount of the outstanding bonds and interest ; or, if the property will bring so much, for the amount of interest due subject to the payment by the purchaser of the outstanding bonds and interest as it becomes due ; and may be on such credits as the court deem proper, not less than two nor more than four years in the average ; or when made subject as aforesaid, not less than three nor more than six years : Ky. p. 770, § 1.

The sale is after such notice, and at such place as the court deem proper : Ky.

In all cases of foreclosure of railroads no sale shall take place at the instance of the trustee of the mortgage until after three years from the entry of the decree, except a majority of the bondholders petition the trustee to make such sale : Kan. 23,121,122.

If at the time of the entry of such decree no receiver was appointed, the court shall appoint a receiver : Kan. 23,124.

The foreclosure decree must provide that the purchasers must fully pay all sums owing by railroad foreclosed to servants and employees, and complete all legal contracts subsisting for the sale of lands, and the decree must also provide for the protection of the rights of any persons in warehouses or side tracks erected on the right of way : Minn. 2534.

In actions of foreclosure the district court of any one of the counties where the railroad lies has jurisdiction : Kan. 23,119.



§ 8923. **Foreclosure without Sale.** The trustees, on application of one third of the bondholders in amount, shall give notice thereof by publication for three weeks in the state paper and in one paper in each county where the road runs, and record such notice in the registry of deeds in every county; and unless within three years from the first publication the mortgage is redeemed, or a bill in equity to redeem commences, founded on a legal tender of the amount of overdue bonds and coupons, or containing an averment of readiness to redeem on accounting, the mortgage is foreclosed: Me. 51,91; 1887,85.<sup>a</sup>

NOTE. — Applies to all mortgages of land or franchise or other hereditaments given by any corporation to trustees to secure scrip or bonds, and whether foreclosed according to this section or in any other way.

§ 8924. **Effect of Sale.** (See also § 8934.) The foreclosure inures to the benefit of all the holders of bonds, coupons, and all other claims secured thereby: Me.<sup>a</sup> 51,93.

And they, their successors and assigns, are constituted a corporation as of the date of the foreclosure for all the purposes and with all the powers, duties, rights, and obligations of the original corporation by its charter: Me.<sup>a</sup> 51,93.

And the trustees shall convey to such new corporation all the right and interest they had by the mortgage and the foreclosure thereof, and shall thereupon be discharged: Me.<sup>a</sup> 51,93.

The charter and franchises of any railroad company, against whom proceedings shall have been or shall be taken to foreclose such mortgage, and to sell the mortgaged property, shall subsist and continue during the pendency of such proceedings, and shall inure to the benefit of the purchaser or purchasers of the mortgaged property: N.J. R.Rs. 166.

When any railroad is sold by an assignee or trustee, the conveyance confers the same privileges and duties upon the purchasers as if under process or decree of court: Pa. Corps. 126.

If a sale be made under a deed of trust or mortgage executed by a company on all its works and property (or under order of court, W.Va.), and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale, not only the works and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale, other than debts due to it. Upon such conveyance to the purchaser, the said company shall *ipso facto* be dissolved. And the said purchaser shall forthwith be a corporation, by any name which may be set forth in the said conveyance or in any writing signed by him and recorded in the court in which the conveyance shall be recorded: Va. 1233; W.Va. 54,72. See also § 8930.

Upon the filing with the secretary of state of a duly attested copy of the deed and confirmation of sale of any railroad, or charter, or franchise, as herein provided for, or of a deed executed under a sale by virtue of a deed or mortgage of trust, or voluntary sale, such transfer shall be recorded in the same manner and in the same book that the original articles of incorporation are now recorded, and thereupon said purchase shall vest absolutely in said purchasers all right, title, claim, and interest which belonged to or were vested in said original corporation by said charter or franchise: Ark. 5449.

The original corporation shall exist, after the foreclosure of the mortgage, for the sole purpose of closing its unsettled business; and the right of action against it or its stockholders is not thereby impaired: Me.<sup>a</sup> 51,107; Va. 1235. But in suits founded on any of the bonds or coupons secured by the mortgage, the proportional actual value of the property taken under the mortgage shall be deducted: Me.

Whenever a sale of the road-bed, track, franchise, and chartered powers and privileges is made as hereinbefore provided, (unless other persons shall be appointed by the

legislature, or by some court of competent authority,) the directors or managers of the sold-out company at the time of the sale, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of the sold-out company, and shall have full powers to settle the affairs of the sold-out company, collect and pay the outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expense; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold-out company, and may be sued as such, and shall be jointly and severally responsible to the creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands: Tex. 4261.

NOTE. — <sup>a</sup> See § 8923, note <sup>a</sup>.

§ 8925. **Of the Purchasers.** (See also § 8930.) It shall be lawful for any mortgagee of any railroad and the franchise thereof to become the purchaser of the same, at any sale thereof under the mortgage, and to hold for six months and convey the same to any railway company with all the rights and privileges belonging thereto: N.Y. 1890, 565,81.

When a railroad has been sold under mortgage or order of court, a connecting railroad may purchase and operate it with all its franchises: Vt. 1886,21; N.J. 1888,221; Pa. R.Rs. 40; O. 3426; S.C. 1433; Ill. 114,1. See § 8930.

And it may issue its own stock for such amount as the purchaser may deem the full and fair value thereof, and hold and enjoy the railroad so purchased, with all the rights, privileges, and franchises, and with the same rights to charge for tolls, transportation, and car service, and subject to the same restrictions as were held, enjoyed, and limited by and in respect to the company of which the road may be so sold: Pa. R.Rs. 40; Vt. 1886,21; S.C. 1433.

And may consolidate therewith: Vt.

The purchasers of any railroad sold under any mortgage or otherwise, when put in possession of it, have the same right to operate it as the original company: Tenn. 1254; Tex. 4260; Fla. 39,10.

No purchasers of any railroad shall be entitled to any rights under this act until they shall first assume and pay in money, or satisfactory securities to be issued by the new corporation, as the creditors may elect, all ticket balances and back charges for freight, with interest, which are owing to any connecting railroad lying entirely or partly in the state: Ind. 3943.

When any railroad corporation shall be dissolved, or its property sold and conveyed under any execution, deed of trust, mortgage, or other conveyance, the owner or purchaser shall constitute a new corporation, and the property, franchises, and profits of said new corporation shall be taxed as other like property, franchises, and profits are taxed: N.C. 2005.

All rights, privileges, and immunities appertaining to the franchise sold under judicial proceeding against delinquent railroads by the state, under the charter and its amendments and the general law of the state, are transferred to and vested in the purchaser: Tenn. 1253.

§ 8926. **Creditors' Rights.** When a sale is made of a railroad and franchises, either with or without other property, under a railroad mortgage or power of sale thereof, for the security of a debt of a railroad company, or when such sale is made under the order of a court, any creditors of such road, under such mortgage, may within three months after such sale pay into the court of chancery making such order of sale, or, if no order of sale has been made, into the court of chancery in some county through which such road is located, for the use of the purchaser at such sale, a sum bearing the same proportion to the price paid by the purchaser, with twelve per

cent interest thereon from the time of the sale, that the debt so held by such creditor under the mortgage bears to the whole amount of debt outstanding under the mortgage; whereupon the creditors shall have a legal and equitable interest in the property so sold, in common with such purchaser, in the proportions aforesaid; and in such cases the court of chancery may in a summary manner adjust the rights of the parties, and grant such relief as the nature of the case requires: Vt. 3476.

§ 8927. **Redemption.** When a subsequent mortgage of the railroad contains no provision for a sale, or contains a conditional provision depending on the application of the majority of the bondholders, and none such has been made, the holder of such mortgage may redeem a prior mortgage on the same property, which is under process of foreclosure, at any time it becomes absolute, and hold it in trust for those who contributed thereto, in proportion to the amount paid by each: Me.<sup>a</sup> 51,98.

For such purpose, the trustees of the subsequent mortgage, on application made six months prior to absolute foreclosure of the earlier mortgage, call a meeting on application of any person interested, and, if the holders of a majority of the interests there represented vote to redeem the prior mortgage, each one may contribute his proportion thereto: Me.<sup>a</sup> 51,99.

If no such meeting is called, or it is voted not to redeem, one or more of the persons interested in the subsequent mortgage may pay the trustees thereof the amount required to redeem the prior mortgage, and such trustees shall redeem it accordingly, and hold it in trust for such persons: Me.<sup>a</sup> 51,100.

When a prior mortgage has been redeemed in either such mode, persons interested in the subsequent mortgage who have not paid their proportions thereof may do so, with twelve per cent interest, within one year from the publication of the notice. Money so paid shall be divided ratably to those who advanced the redemption money. Me.<sup>a</sup> 51,101.

Such persons become a new corporation, and new certificates of stock may be issued to them: Me.<sup>a</sup> 51,101.

Each holder of overdue bonds or coupons must present them to the trustees for record at least thirty days before the right of redemption expires, and such right is not lost by the non-payment of any claims not so presented: Me.<sup>a</sup> 51,92.

When a prior mortgage is thus redeemed, any number of the stockholders of the old corporation may redeem it within two years thereafter by paying to the trustees of such subsequent mortgage the amount paid therefor, with ten per cent interest, and also the amount secured by the subsequent mortgage due to those who had contributed to redeem the prior mortgage after deducting the net earnings of the said road or adding the net deficiencies, if operated by the trustees of the prior mortgage. And said stockholders may demand of said trustees an accurate account of the receipts and expenditures, and amount due on the mortgage, and have the same remedies for a failure as in case of mortgages for real estate. After such redemption, the redeeming stockholders have all the rights of those from whom they redeemed: Me. 51,102.

The stockholders redeeming as aforesaid shall give notice to the stockholders who have not contributed thereto, and the latter shall have the same rights as hereinbefore provided in the case of bondholders: Me. 51,103.

The persons interested in a prior mortgage on which a foreclosure is commenced, at a meeting called for the purpose, may extend the time of redemption: Me. 51,104.

If the original corporation, or those claiming under it, have a right to redeem, they may do so in the manner provided for the redemption of mortgaged real estate; but shall pay, in addition to the amount of the sale and interest, the reasonable expenditures made by the new corporation in completing, repairing, and equipping said road, and in the purchase of necessary property therefor, after deducting the net earnings thereof: Me. 51,105.<sup>a</sup>

The franchise and property of a railroad corporation may be redeemed by it, or any mortgage thereof, from sale on execution, by paying or tendering to the purchaser the sum paid therefor at such sale, with interest, at any time within sixty days after the final determination of any writ of error to reverse the judgment upon which such execution issued, or of any suit to test the validity of such sale, brought before the sale or within sixty days thereafter; but nothing herein shall be construed as authorizing such a sale : R.I. 1888,716.

NOTE.—“ And Me. 51, §§ 85 to 108 inclusive, apply to all such mortgages heretofore or hereafter given, in all cases where the principal of said bonds has been due or payable more than three years and remains unpaid in whole or part, or on which no interest has been paid for more than three years, “ *in the same way and to the same extent as if the mortgage had been legally foreclosed*, subject to all rights of redemption as provided in § 95 ; and the holders of said scrip or bonds shall have the benefit of said sections, and all the rights and powers of a corporation, and may form a new corporation as in this chapter provided whenever a majority of such bondholders, etc. so elect : and any subsequent foreclosure, in any method, of the mortgage given to secure said bonds shall inure at once to such corporation and vest title therein : ” Me. 1887,103.

§ 8928. **Railroads in two States.** (See Art. 888.) When a railroad lies partly in and partly out of the state, having been created by consolidation of a railroad in this state and one in another, and has executed a mortgage upon its entire line, and the sale under it has been ordered by a court of the state where the greater part of such line is situated, said sale shall pass title to the purchaser of that part of the line lying in this state, and may be confirmed “ in any action brought in the proper court in this state : N.Y. 1890,565,76 ; N.J. Suppl. R.Rs. 85.

So a corporation created for the purpose, under the laws of the state in which the greater part of such line is situated, may take title to and operate the entire line of railroad so sold : N.Y. 1890,565,77 ; N.J. Suppl. R.Rs. 86.

But the provisions of this section (or any new act) do not apply unless such corporation first waive all exemptions, or special charter rights, of taxation, and further agree that all laws affecting it shall in future be subject to amendment and repeal : N.J. Suppl. R.Rs. 88.

A receiver of said entire line, appointed by such court in the state where a greater part is situated, may perform his duties in this state not inconsistent with the laws thereof, and sue and be sued therein : N.Y.

If suit is brought for foreclosure of a railroad in the state of its original creation and also in this state, the suit here shall, so far as is consistent with the protection of parties having acquired liens in this state, be regarded and conducted as auxiliary to the suit brought in the other state ; and the court in this state may frame its decree so that sale may be made at the same time and place with the sale under the decree obtained out of the state, and in accordance therewith : N.J. R.Rs. 72.

Generally the sale of the railroad in the state and of that out of the state shall thus be managed together, and that part of the railroad in the state shall be sold only when sale is actually made in the foreign decree : and the sales are made together, but with condition that the sale of the line in this state shall pay and discharge all liens upon the property : N.J. R.Rs. 73.

A new corporation formed outside the state after such sale made becomes vested with all the rights of the original corporation within the state : N.J. R.Rs. 74,76 ; Ala. 1598.

Or the purchasers may reconvey the part in the state to the old or consolidated company : Ga. 1689(22).

Where a receiver has been appointed in this state of a corporation created under the laws of any other state, the chancellor may order sale of such property at the same time and place as under any decree of foreclosure without the state, and the receiver may order to make conveyance upon such terms as seem just : N.J. R.Rs. 77 & 78.

Such new corporation shall have the same property, franchises, etc. as fully as if such purchasing corporation were organized therefor under the laws of this state : N.J. R.Rs. 79.

A mortgage conveying a railroad situated partly within this and partly within another state, having been confirmed or authorized by the laws of this state, any corporation formed under the laws of the state within which the corporation which last owned the said railroad was incorporated that shall, under said laws, succeed to the title acquired by purchasers or mortgagees of said railroad under any foreclosure sale by a court of such state, shall succeed to the ownership of said railroad within this state, property and franchises, free of any lien or encumbrance subsequent to that of the mortgage under which the sale was had, as fully and completely as the same were possessed by the company as whose property they were sold : provided that said order of sale shall as to the railroad within this state have been adopted by an ancillary order made by a state or federal court within this state : Pa. R.Rs. 103.

A company of this state possessing such a railroad shall have capacity to exercise without this state all its powers, privileges, faculties, and franchises ; a corporation of another state, possessing a railroad which is partly in such other state and partly within this state, may exercise and enjoy within this state all its powers, privileges, faculties, and franchises, for the purpose of such railroad and its business, not inconsistent with the laws of this state ; and all mortgages and deeds of trust made by such corporation upon its railroad, equipments, or other property within this state shall operate in the same manner and with the like effect as hereinbefore provided with respect to companies so reorganized ; but such part of the railroad as is within this state shall be subject to taxation, and to all regulations of law, in the same manner as railroads of this state in like cases, and the corporation owning the same shall be subject to all duties in respect thereto imposed by law, and may sue and be sued in all cases and in the same manner as a company of this state might sue or be sued : O. 3399.

Railroads, and other property mortgaged therewith by such company, may, if the court deems it expedient, be sold without appraisalment at judicial sales under judgments upon such mortgage ; but in such case, in order to prevent sacrifices and protect the interests of all concerned, the court shall fix a minimum sum, below which no such sale shall be made ; and, in order to fix that amount, the court may, if it deems it expedient to do so, refer the subject to a master, with instructions to take testimony, and report the sum : O. 3400.

When judicial proceedings are pending in any court sitting in this state for the sale of any railroad, and the same is in the hands of a receiver appointed by such court, two thirds in interest of each class of mortgagees, or holders of the bonds issued under a mortgage, and two thirds in interest of all other classes of creditors of such company, and the owners of two thirds of the shares of the stock thereof, may agree in writing upon a plan for the adjustment of such indebtedness, by capitalization or otherwise : O. 3401.

When such agreement is made, and filed in the office of the secretary of state, he shall cause public notice thereof to be given in a newspaper of general circulation published in each of the cities of Columbus, Cincinnati, and Cleveland, and also in a newspaper of general circulation published in each of the counties through or in which the road is located, which publication shall be made immediately after the agreement is filed, and be continued for six consecutive weeks, and the cost thereof shall be paid by the company : O. 3402.

A duplicate of the agreement shall be kept at the principal office of the company ; and all persons in interest, not parties thereto, shall be at liberty, for the period of four months from and after the date of the first publication, to appear and become a party to such agreement, either in person or by proxy, by signing the same, and thereby secure the benefits thereof : O. 3403.

All persons in interest who fail to become parties to the agreement within the time aforesaid shall thereafter be entitled to the same rights, interest, and estate, remedy, liens, and action, and none other, which parties in interest of like class and amount who signed the agreement obtained by, through, and under the agreement; but if any person in interest neglect and fail, for the period of six years after the publication of the notice mentioned in § 3402 (above), to apply at the principal office of the company, either in person or by proxy, to become a party in interest in the agreement, such person, unless an infant, a married woman, or insane, shall be barred of all interest, claim, right, or action under the agreement: O. 3404.

So much of the road as lies within the state and is embraced in the mortgage may be sold at such sale as an entirety: such sale to be made at the court-house door of the county where is the principal office within the state: Ind. 3941.

A railroad lying partly in and partly out of the state may be sold at one time and place as an entirety at any point on the line of road, under decree of any competent court either within or without the state: Ind. 3945.

NOTE. — "If application therefor be made within sixty days: N.J.

§ 8929. **General Provisions.** The provisions of this title shall not apply to any debt, execution, or deed of trust held by the state against any railroad company, because of any loan made by the state to any company under the provisions of the act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies; nor shall any creditor of any railroad company be allowed to make the state a party to any suit brought for the enforcement of any debt, mortgage, or deed of trust, or lien on any railroad, or permitted to require the state to foreclose any lien which it may have upon any road, but the lien of the state and its right to enforce the same shall continue as if this title had never been passed, and as if no sale had been made under the provisions of the same: Tex. 4266.

Any sale made except as above is absolutely void, and conveys no title: Kan. 84,56.

**Special Cases.** A company which for any cause is unable to complete its line may sell and transfer its road-bed or right of way to any other company," with authority to construct and operate such railroad: O. 3409; Mich. 3403.

In such case, the president shall call a meeting of the company, at some convenient point on the line, or at a terminus of the road, of which he shall cause at least thirty days' notice to be published in some newspaper printed or in general circulation in each county in which such road-bed and right of way are situate: such meeting may, by a concurrent vote of two thirds in interest of the stock represented thereat, by the owners thereof in person, or by proxy, declare by resolution the inability of such company to complete its line of road, prescribe the terms of the proposed transfer of its road-bed and right of way, and direct the president of the company to execute the deed; and all such proceedings, resolutions, and directions shall be duly recorded in the proper record-book of the company, and a copy thereof delivered to the grantee, and they shall also be recited in the deed: O. 3411; Mich. 3403-4.

Nothing in this act contained shall be construed as rendering valid any conveyance which shall in any manner interfere with the rights of creditors; provided, that the company so buying such railroad shall complete the same within five years from the date of purchase, or said sale shall be void: Mich. 3405.

No transfer shall be made against the dissent of any stockholder, expressly declared and filed in writing at such meeting, without the guaranty of the company grantee that it will cause to be issued to him certificates of its capital stock equal in amount to his *pro rata* interest, as a stockholder of the grantor, in the amount for which the property is sold: O. 3412.

The title to the property so transferred, together with the right to use, occupy, and enjoy the property for any and all purposes proper for the construction, maintenance, and operation of a railroad thereon, shall pass to and vest in the company grantee, by the execution of the deed, to the same extent as the granting company might or could use, occupy, and enjoy the same : O. 3413.

If any railroad involved in such judicial proceedings is used in whole or in part by such company in common with any other railroad company, it may lease or sell for a fixed sum an undivided interest in such part of the line upon such terms as may be approved by court : O. 3407.

NOTE. — <sup>a</sup> But such company may not be a competing line, or one having the same terminal points : Mich.

### Art. 893. Reorganization.

§ 8930. **Who may Reorganize.** (See also § 8925.) Where a mortgage of a railroad or other property, or part thereof, made by a railroad, mining, or manufacturing company to secure the payment of bonds, is foreclosed, and the legal title to the mortgaged premises vested in the mortgagees or sold, (1) the persons holding a majority in amount of the principal of the bonds so secured may form themselves into a corporation for the purpose of owning or maintaining and operating such railroad, or part thereof, for public use in the conveyance of persons and property : Vt. 3461 ; 1890,23.

(2) The purchasers at the sale, and such others as they may associate with themselves, may organize : N.J. Suppl. R.Rs. 44,45 ; R.Rs. 167 ; 1887,125 ; Pa. 1885,164 ; Ind. 3937,3946 ; Mich. 3314 ; Wis. 1828 ; Md. 23,187 ; Ky. 1878, March 1 (Gen. Stats. p. 767) ; 1890,582 ; Tenn. 1256-7 ; Ark. 5450 ; Tex. 1889, p. 131, 1891,86 ; Col. 1885, p. 150 ; Dak. 1879,46,9 ; Ga. 1689(v) ; Ala. 1596 ; Miss. 1882,25,2 ; 1884,86 ; Fla. 39,10 ; Oka. 1036.

So also when the railway has been sold under a judgment : N.J., Pa., Tenn. 1255, Ky., Tex., Col., Ala.

Or voluntary sale : Ark.

Or power of sale : N.J., Pa., Col., Miss., Oka.

When the franchise of a railroad, or its road, or the right of redeeming the same from a mortgage, are sold by decree of court, power of sale (N.Y.), or on execution, the purchasers have all the rights, powers, and obligations of the corporation under its charter, and may form a new corporation in the manner hereinbefore provided : Mass. 1886,142 ; Me. 51,105 ; N.J. R.Rs. 56 ; Pa. 1885,164 ; Kan. 23,120, Tenn. 1254 ; Ala. 1598 ; Miss. ib. 1.

The purchasers of any railroad at a judicial sale under any mortgage, upon confirmation thereof, or any sale under mortgage or deed of trust that has been or shall be made, or any voluntary sale, shall become possessed of, and shall be entitled to hold, exercise, and enjoy all the corporate rights, powers, privileges, immunities, charter, and franchises of the company, as fully as the same were held, exercised, and enjoyed by said company before said sale, and under any name which the purchasers may elect : Pa. 1885,164 ; Ark. 5448 ; Tex. 4260 ; Fla.

When a mortgage has been placed upon the whole or any part of the railroad with the franchises pertaining thereto, and the road may be foreclosed thereunder, the purchaser at such a sale becomes invested with all rights, property, and franchises so foreclosed and embraced in said mortgage, or afterwards accrued ; and whether said mortgage and sale include the corporate franchises or not, the persons for whose benefit the purchase was made may organize and become a corporation with all the powers

and rights held by the company making such mortgage, so far as applicable to the property purchase : Minn. 2534 ; Miss. 1882,25,1.

In case of neglect or failure to organize a new corporation under the provisions of this chapter, when a mortgage has been foreclosed, or if the railroad and other property on which the mortgage exists is sold or assigned by an order, decree, or judgment of a court, the purchasers or grantees who acquire title to the same in the manner prescribed by law shall have the rights, powers, and privileges granted in this chapter to a majority of the bondholders, and be subject to like duties ; and may associate with them other persons, and may make, sign, and file articles of association as before prescribed in this chapter, and shall thereupon be a corporation with the powers, privileges, and franchises granted to, and be subject to the duties imposed upon, railroad corporations : Vt. 3475 ; 1890,23.

Any and all railroads or transportation companies authorized to be incorporated and transact business in this state by virtue of this act shall be and they are hereby authorized and empowered to purchase, own, operate, and maintain any railroad sold or transferred under order or power of sale, or decree of or sale under foreclosure of mortgage or deed of trust, and corporations heretofore organized under the provisions of the act hereby amended, their successors or assigns, shall have and possess all the powers and privileges conferred by this act. Ill. 114,1.

Upon foreclosure sale of any railroad, if the purchasers provide equipment and perform the duties of running the road, they may make declaration that they have so done to the secretary of state, and thereupon issue and hold new stock in such corporation to such amount as they deem proper ; provided that unless additional stock shall be in good faith subscribed by persons able to pay up the same, no more stock shall be issued than is sufficient at par to represent the fair value of all the property and rights then owned by said corporation : Mich. 3406.

In all cases where, under such foreclosure sale, the said railroad, property, and franchises shall be purchased at such sale by any railroad company heretofore or hereafter duly chartered under the laws of this state, then such railroad company so purchasing shall not be required to comply with the provisions ; but said railroad corporation, so purchasing at such sale, shall, upon filing in the office of the secretary of state of the conveyance or certificate of sale received by it under such purchase, and by virtue thereof, be immediately vested with all and singular the corporate rights and powers without any further act or ceremony : Minn. 2534.

Railroad corporations may be formed pursuant to the laws of this territory for the purpose of buying any railroad property situated therein, when the same is to be sold under trust deed, mortgage, or private sale ; and any railroad corporation heretofore formed pursuant to the laws of this territory, which had for its purpose the purchase of railroad property, already constructed, is hereby declared a valid corporate body, and any purchase of railroad property by such corporation that was sold pursuant to trust deed, mortgage, judgment and decree of court, or private sale, is hereby made valid and binding : Uta. 2373.

**§ 8931. Process.** Such persons may make, subscribe, and file articles of association, in which shall be set forth (1) a brief statement of the making and foreclosure of the mortgage under which they have become interested in said railroad (Vt., Ala. only) ; the amount of bonds which were owing upon and secured by the mortgage (Vt. only) ; the name of the corporation to be formed ; the amount of its capital stock (which shall not exceed the amount of principal and interest of said bonds and twenty-five per cent on the same in addition thereto, Vt. only) ; and the number of shares (each of which shall be one hundred dollars, Vt. only) into which the capital stock is divided ; the number of directors by whom the corporation is to be managed (Vt., Md., Tenn. only) ; and the names of the persons who are to be directors for the first year, and until



others are chosen in their places (Vt. only); [a majority (one, Tenn.) of whom shall be residents of the state]: Vt. 3462; Md. 23,187; Tenn. 1260; Ala. 1597; Miss. 1882, 25,3.

Their names and places of residence: Ala.

Such other matters as they deem desirable: Ala.

(2) The description of the property sold, and the date of the deed under which it was sold, or of the decree of the proper court, if it shall have been sold by virtue of a decree of any court; and with such description of the parties to the deed or suit as may identify the one or the other, or both; the time of the sale, and the name of the officer who sold the same, and also the purchasers, and the amount paid, and the stockholders to whom stock is to be issued, and the amount of the capital stock and the name of the new corporation; and such other statements as may be found requisite to make definite the corporation whose property may have been sold, and the property sold, as well as the extents and rights and property of the new company: Mich. 3314.

(3) Its basis of organization, the amount of its capital stock, and the names of the directors and stockholders, with the amount of shares held by each: Ark. 5451.

(4) The mode by which said purchasers, or their assigns and associates, as above mentioned, shall become incorporated, shall be as prescribed in Title II., Arts. 850, 852: Wis. 1828; Ky. p. 767, § 2; Tex. 1889, p. 131; 1891,86; Ga.; Oka. 1036.

Such articles of association, or a certificate of organization, shall be filed in the office of the secretary of state: Vt.; N.J. R.Rs. 171; 1887,125; Kan. 23,120; Tenn.; Ark. 5457; Ala.; Miss.

And a copy thereof filed and recorded in the offices of the clerks of the counties through which the railroad passes; but the articles shall not be so filed until the amount of the bonds to be surrendered by the subscribers thereto for that purpose shall be at least a majority in amount of the principal of the bonds secured by the mortgage referred to in such articles; nor until there is indorsed thereon, or annexed thereto, an affidavit made by at least three of the directors named in the articles that they have examined the list of subscribers, and that they believe the said subscribers to be the holders or representatives of the amount of bonds therein stated, and intend to comply with the terms of their subscription: Vt. 3465.

A notice of the formation of such corporation, and the filing of the articles, shall be published once a week for three successive weeks in a newspaper published in each county, and for six days in two dailies each in New York and Boston: Vt. 3466.

A copy of articles of association, certified, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated. Vt. 3468; Md. 23,187.

Each subscriber to such articles shall state in his subscription the number of shares which he agrees to take, and the amount of bonds held by him and secured by such mortgage, which he intends to surrender in payment or part payment of his subscription. Such subscription may be made by the holder in person, or by his attorney or agent, and three of the persons named in said articles as directors may be inspectors of such subscriptions. The production of a bond shall be evidence of the right of the person holding the same to subscribe to said articles: Vt. 3463.

No subscription shall be made for a fractional part of a share; but when a holder of bonds would otherwise be entitled to subscribe for a fractional part of a share, he may subscribe for a full share and pay the excess in cash: Vt. 3464.

A holder of a bond secured by such mortgage may, within thirty days after the last publication of such notices, either in person or by attorney or agent, subscribe the articles of association, or a copy thereof, for an amount of stock equal to the amount of

bonds held by him, which he intends to surrender to the directors of said new company, in payment or in part payment of his subscription : Vt. 3467.

If a holder of bonds, secured by the mortgage referred to in such articles of association, does not subscribe the articles and become a stockholder in the company, the court of chancery may, upon the application of such holder, direct the estate, title, and interest of such holder to be assigned to said company, and such company shall pay such sum of money, at such times and in such manner, to the other party, as commissioners appointed by the court judge just and equitable ; and if said holder is not satisfied with such appraisal, the court shall order the commissioners to sell such estate at public or private sale, agreeably to the order of the court, and execute a conveyance to the purchaser thereof, as provided in case of the partition of real estate : Vt. 3469.

If a railroad and property connected therewith are sold upon a mortgage or deed of trust, given to secure notes or bonds issued by a railroad company, either by virtue of a power of sale contained in such mortgage or deed of trust, or by an order or decree of the court of chancery, and said railroad and property are encumbered by a prior mortgage or deed of trust, the same shall be sold subject to such prior encumbrance ; and the purchasers shall have the same powers to organize a new corporation and be entitled to the privileges, and the bondholders to the rights, provided in this chapter : Vt. 3478.

Upon filing in the office of the secretary of state, within six months after such sale or lease, a certificate that they accept the charter of the company whose property has been sold or leased, under some corporate name different from that of the said company, such purchasers or lessees shall become a corporation under the name so specified, with all the powers, rights, privileges, and franchises of the former company ; the lessees or purchasers, or corporation formed by them as aforesaid, shall hold and enjoy the same free and clear of all debts, claims, and demands of creditors, mortgagees, or stockholders, who shall look only to the fund arising from such lease or sale, which money, as collected, shall be paid into the court of chancery ; but where such property is subject to a mortgage, the chancellor shall, if the principal is not due, direct a sale or lease to be made subject to the lien of the mortgage : N.J. Suppl. R.Rs. 57.

When proceedings are pending in any court for the sale of the road of a company, under a mortgage or deed of trust, and two thirds in interest of the creditors and two thirds in interest of the stockholders of the company agree, in writing, upon a plan for the readjustment or capitalization of the debt and stock of the company, the court shall render judgment against the company for the amount due and in arrear upon such securities, which judgment shall, from its rendition, become a lien on all the property embraced in such securities, and upon all the franchises and powers of the company, including its franchise to be and act as a corporation, conferred by the charter and the amendments to the charter of the company ; and upon a sale had under such judgment, and a purchase at such sale by trustees, on behalf of the parties to such agreement, appointed by the agreement, all the property so bound by the judgment, including said franchises, shall vest in such trustees ; but every such agreement shall provide that the unsecured debts of the company, incurred for repairs or running expenses, shall be paid in money, or bonds of the reorganized company of the highest class issued, as hereinafter provided ; and a copy of the agreement shall be filed in such court, before the rendition of the judgment : O. 3393.

The trustees shall, as soon as practicable after the sale, call a meeting of the parties to the agreement, by a notice signed by a majority of the trustees, or of their survivors, and published not less than once a week, for four consecutive weeks, in a newspaper printed in the cities of New York and Philadelphia, and in a newspaper printed in each county on the line of the railroad, specifying the day, place, and object of such meeting, — the place to be on the line of the road ; at such meeting each of the parties to the agreement shall be entitled to vote according to the provisions thereof, but not exceed-

ing one vote for every fifty dollars of the par value of the debt or stock of such party, according to a list of voters and of their respective interests, which shall be prepared by the majority of the trustees, who are empowered to act as judges of the election; such meeting, by a majority in interest of the persons present, in person or by proxy, shall be competent to retain or change the name of the company, to decide, for the time being, the amount of its capital, and the number of shares into which such capital shall be divided, to fix the number of directors and their term of office, to elect such directors, a majority of whom shall be residents of the state or states in which such railroad is situate, and to do all things necessary or proper to reorganize the company; but any creditor shall be entitled to become a party to the agreement aforesaid, either at or any time before the meeting in this section provided for, and any stockholder shall be entitled to become a party to such agreement at any time within one year after such meeting: O. 3394.

A certificate, under the common seal of the company, specifying its name, and the railroad which it is to hold, maintain, and operate, shall be filed in the office of the secretary of state; and a copy of such certificate, duly certified, shall, in all courts and places, be evidence of a compliance with all the conditions and provisions of the two preceding sections, and of the due reorganization and existence of the company: O. 3395.

The purchaser of a railroad, situate wholly or partly within this state, which has been or may hereafter be sold pursuant to judicial proceedings, may acquire the franchise to be a corporation originally vested in the corporation which held the road prior to such sale, by grant of such company, under such terms and conditions as may be agreed upon by the directors of the company, with the consent of the stockholders owning two thirds of the stock; which grant shall be in the same form as is required by law to convey real estate, and shall pass such franchise to the persons or company becoming the owner, by purchase as aforesaid, of such railroad; but no such grant shall be made unless provision be made for granting to the stockholders in the original company stock in the reorganized company, upon equal terms with the stockholders thereof, and as shall be acceptable to the directors making such grant: O. 3419.

A company organized under the laws of this state may become the purchaser of such property; and any number of persons not less than five may become the purchasers of such road, road-bed, rights of way, property, and franchises, at such sale, and upon filing a transcript of the decree of confirmation in the office of the secretary of state shall become a corporation of this state, amenable to its process, and, with perpetual succession by such name as they may assume to themselves, subject to the laws of this state regulating corporations, and shall hold the property, rights, and franchises so purchased free and discharged from all liability for the debts of the original corporation: O. 3426.

The purchaser or purchasers of the real and personal property, road-beds, rights of way, fixtures, and franchises of any railroad company in the state of Ohio, and situated wholly or in part in this state, that have been or shall hereafter be sold pursuant to judicial order, judgment, or decree, and which sale has been confirmed by the court making the order of sale, may sell the same, or any portion thereof; and the title thereto, with all the rights, liberties, faculties, and franchises shall pass by such sale and vest in the purchaser or purchasers thereof as fully as if the same had been possessed, exercised, and enjoyed by such railroad company, and which passed by said judicial sale; which grant, being in the same form as by law required to pass real estate, shall be recorded in the record of deeds of the county or counties in which said real or personal property is situated, and said rights and franchises are or may be exercised: O. 1890,3426a.

Any railroad company organized or existing under the laws of this state may become the purchasers of such property, as provided in the first section (3426a) of this act, and

any number of persons may become the purchasers of such road, either directly at such judicial sale or by grant from the purchasers at such sale, whether the same shall have been heretofore or may hereafter be made; and upon filing a copy of said deed or grant in the office of the secretary of state, with articles of incorporation, they and such persons as they may associate with them, not less than five in number, shall become a corporation, with perpetual succession, by such name as they may assume to themselves, with full capacity to maintain and operate such railroads, whether located wholly within this state or partly within this state and partly within another state or states, and with authority to provide for the purchase price of the railroad and other property so purchased, by the issue of its capital stock, preferred or common, and bonds secured by mortgage or otherwise, bearing interest at a rate not exceeding seven per cent per annum, and stock and bonds heretofore or hereafter issued as such purchase price, in whatever amounts the incorporators, in good faith, may have agreed on, shall be valid and taken as fully paid for by the transfer to said corporation of such railroad and property, and also by such issue of stock or bonds, to raise the necessary means suitable to improve such railroad property and equipment for the uses and purposes for which it is employed; and in the operation and maintenance of such railroad, the said corporation shall be entitled to all the rights and be subject to all the obligations and restrictions imposed upon railroad companies by the general laws of this state: O. 1890, p. 270.

The purchaser or purchasers, they and their or he and his associates, may form a corporation by filing in the office of the secretary of state a certificate, under their or his signature, specifying the name of such corporation, the number of directors, the names of the first directors, and the period of their service (not exceeding one year), the amount of the original capital, and the number of shares into which such capital is to be divided: Ind. 3937.

If a majority in interest of the creditors of a railroad, and also of the stockholders, agree upon a plan for readjustment or capitalization of the debt or stock, either before or after sale under judicial proceedings, all the franchises and powers shall pass by such sale and vest in trustees purchasing on behalf of the parties: Ind. 3937; Oka. 1036.

No sale under this act shall be valid unless notice thereof has been published in some newspaper in the city of New York, and also in one newspaper in every county through which the road runs, for thirty days preceding: Ind. 3937.

Corporate authorities of municipal corporations holding stock, and all persons holding such stock in a fiduciary capacity, are given power to surrender stock and accept new stock in case of a sale and reorganization: Ind. 3942.

Any railroad having issued a mortgage may, with the consent of a majority of the stock, settle and compromise with such mortgagees, and release and convey to these or the creditors for whose benefit such mortgage is held such part of the road mortgaged, and upon such terms, as may be agreed upon; and such vendees shall thereupon become a corporation, and may issue stock not exceeding twenty thousand dollars per mile, with the other rights and franchises; provided that no such compromise or conveyance can be made until thirty days' notice by publication in the newspaper in the state published in the county of the principal office: Ind. 3953.

**§ 8932. Organization of New Company.** The new corporation may call its first meeting in the manner provided for the original corporation, and may use the old name or adopt a new name: Me.<sup>a</sup> 51,94.

It may take and hold the possession and use of the mortgaged property, although a bill to redeem is pending, and may become a party defendant to such bill: Me.<sup>a</sup> 51,94.

The purchasers at the sale may, after being put in possession of the property, meet together, adopt a name, and elect a board of directors of not less than three, one of whom must reside in the state: Tenn. 1257.

Said new body politic and corporate, at any time within one year (thirty days, Pa.) after such sale and conveyance, to organize themselves as a corporation by the aforesaid name, by electing a board of directors and the election or appointment of a president and such other officers as shall or may be authorized or required by the aforesaid act or acts and supplements thereto, and to make and issue certificates of the capital stock of such new corporation to the said purchaser or purchasers and their associates, to the amount of their respective interests therein : N.J. R.Rs. 56 ; Pa. 1885,164.

Such persons shall meet at some place within the state, notice by publication being given of such meeting, and adopt a new name and elect directors : N.J. Suppl. R.Rs. 47 ; Pa. 1885,164 ; Minn. 2534.

So, within a year : Ark. 5456.

They shall file articles of association, setting forth a brief statement of the making and foreclosure of the mortgage ; the amount of bonds owing under it ; the name of the new corporation, amount of its capital stock, which may not exceed the principal and interest of bonds plus twenty-five per cent ; the number of shares, which shall be one hundred dollars each, and may be preferred upon such terms as the majority prescribe ; the number of directors and names of those for first year, a majority of whom shall be resident in the state : Vt. 3462 ; 1882,35.

Purchasers under foreclosure must hold a meeting at such time as they appoint, after due notice, and organize by electing a board of directors : N.J. Suppl. R.Rs. 47 ; R.Rs. 168 ; 1887,125 ; Tenn. 1257.

At such meeting they shall adopt a corporate name, determine the amount of capital stock, and may issue certificates therefor to the persons for whom the purchase was made, to the amount of their respective interests : N.J. Suppl. R.Rs. 48 ; R.Rs. 169 ; 1887,125 ; Pa. 1885,164.

In shares of fifty dollars each : N.J., Pa.

Every person interested shall be allowed one vote for each one hundred dollars of interest, unless otherwise agreed : Tenn. 1258.

Stockholders of such reorganized company may elect any number of directors not less than seven nor more than seventeen : N.J. Suppl. R.Rs. 69.

Seven : Pa. 1885,164.

Not less than three : Tenn. 1257.

Five to thirteen : Ark. 5456, 5450.

Such number as they see fit : Miss. 1882,25,3.

They shall elect a president : Pa., Tenn., Ark., Miss.

Adopt by-laws : Tenn., Miss.

Fix the amount of the capital stock : Pa., Tenn., Ark., Miss.

And the amount of stock or bonds, or both, which shall represent the interest of the purchasers : Pa. 1885,163 ; Tenn. 1259 ; Ark. 5456 ; Miss.

*Provided* they file acceptance of the new constitution : Pa.

Such new corporation, when duly organized, may issue preferred stock to provide means to settle and discharge such prior encumbrance : Vt. ; N.J. R.Rs. 170 ; 1887,125 ; Pa. 1885,165 ; Ga. 1689(y). And each share of the capital stock shall entitle the holder to one vote : Vt.

But nothing in this and the preceding section shall affect any proceedings which may at the time of such sale, as provided in such mortgage or deed of trust, be pending to enforce the provisions or provide for the foreclosure of such prior mortgage or deed of trust, or to require new parties thereto ; but persons claiming through such sale shall be bound by such proceedings to the same effect as the parties thereto : Vt. 3479.

In case a corporation is so formed by such purchasers or grantees and their associates, the stock of such corporation created to an amount not exceeding that hereinbefore provided may be issued in payment for the railroad and other property included

in such foreclosure upon the transfer and conveyance of such railroad and other property to such corporation, and upon such issue the said stock shall be taken and be deemed to be full paid stock and not liable to any further calls. The said corporation so formed shall have and enjoy the same rights to mortgage its property or to create and issue additional stock, and shall have and enjoy the same rights and powers in all respects, as were held and enjoyed by the corporation which mortgaged such property, or as hereinbefore provided, and also the same rights, powers, privileges, and franchises granted to and subject to the duties imposed upon railroad corporations: Vt. 1890,23,3.

In all cases of railroad companies heretofore or hereafter organized or reorganized under the laws of Ohio, wherein the organization or reorganization agreement provides and stipulates that any class of creditors, bondholders, or stockholders of the original company shall in any wise be restricted or limited in participation in profits or dividends, or in respect to liens or the right to vote as the holders of stock or securities in said reorganized company, the said reorganized company, its directors and officers, shall issue the certificates of stock or securities into which the original stock, securities, or debt may be convertible, bearing upon the face of each, plainly and distinctly set forth, such restrictions or limitations, so that purchasers may be advised of the terms thereof, and all holders of stock or securities created under such reorganization agreements shall hereafter have only such restricted or limited rights, liens, participation in profits, dividends, and right to vote thereon, as may be in such agreements, certificates of stock, or securities provided and set forth: O. 1890,3397a.

It may consist wholly of common stock, or partly of common stock and partly of preferred stock, and the whole or any part thereof may be issued as fully paid up stock in payment or part payment for the road as purchased, and for the construction and equipment thereof, and shall not in the aggregate exceed the amount of stock which the corporation whose road shall have been purchased as aforesaid was entitled to issue: Md. 23,187.

The board of directors shall issue to the parties interested in the purchase shares of capital stock of one hundred dollars each, representing their rights and interests in the property, which shall be fully paid and also such bonds and obligations as they may determine: Tenn. 1261.

Authorized to fix the capital stock of such new corporation at an amount not exceeding the estimated cost of said railroad and equipments when completed, together with such lands as said corporation may acquire, and to issue certificates of the capital stock of such new corporation and to distribute the same; also, whenever deemed expedient, to issue bonds, and to secure the payment thereof by mortgage: Ark. 5456, 5450.

Such corporation shall also have power to make by-laws, rules, and regulations in relation to its business and the number of its directors, and the times and places of holding meetings of the stockholders and directors, and the same to alter and change as may be deemed expedient: provided, that such by-laws, rules, and regulations shall conform to the laws of this state: S.C. 1423.

Upon the making and filing the same with the secretary of state, the several corporations parties thereto shall be deemed and taken to be one corporation by the name provided in said agreement: S.C. 1427.

From the time of such election and the adoption of a corporate seal, the organization is deemed complete and the new company becomes a body corporate: Minn. 2534; and certificate of such organization must be filed with the secretary of state: Minn., Ala.

NOTE. — <sup>a</sup> See § 8927, note <sup>a</sup>.

§ 8933. **Effect.** (See also § 8930.) Such purchaser or purchasers, and his or their associates (not less than fifteen in number, N.J.), shall thereupon become a new body

politic and corporate in fact and in law, by the name of the aforesaid corporation, and shall be deemed and considered the stockholders of the capital stock of such new body politic and corporate, in the ratio and according to the amount of the purchase money by them respectively contributed : N.J. R.Rs. 56 ; Ark. 5455.

Provided, that no such sale and reorganization shall impair any rights of persons not parties to the action, nor the rights of parties, except so far as set forth in the decree ; but when trustees are made parties, their *cestui que trust* may be concluded by such decree : N.J. R.Rs. 56.

Provided, that nothing in this act shall divest or impair the lien or encumbrance of any prior mortgage, or other encumbrance upon the property or franchises conveyed under the original sale of said property or franchises, when by the terms of the process or decree under which the sale has been made, or by operation of law, the said sale is made subject to the lien of any such prior mortgage or other encumbrance, or divest or impair any prior mortgages or other encumbrance thereon created by the vendees of the purchasers at such sale or those holding under them by mesne conveyances : N.J. 1887,125.

Upon such reorganization and conveyance by the trustees, all the railroad with its property and franchises is vested in the company as reorganized, to be held for the benefit of its creditors and stockholders according to their respective rights, and is in no wise chargeable with any debts or liabilities which subsisted prior to the sale and reorganization ; but all the property of the original company not embraced in the sale shall pass to the reorganized company, subject to a trust for all parties interested therein as creditors, stockholders, or otherwise : O. 3396.

The lien of such mortgages shall be postponed to judgments recovered against the company after its reorganization for labor thereafter performed and materials furnished, or damages, losses, or injuries suffered by the misconduct of its agents, or any action founded on its contracts or liability as a common carrier thereafter made or incurred : O. 3398.

In all actions now pending or hereafter commenced in any of the courts of this state, either as original actions, or as proceedings in error against any railroad corporation now existing or hereafter created, or any foreign railroad company operating and carrying on business in this state, when such action is for the purpose of recovering judgment against said corporation for labor performed for it, or for materials or supplies furnished to it, or for damages or losses or injuries suffered or sustained by the misconduct of its agents, or in any action founded on its contracts or liabilities as a common carrier made or incurred, which action by virtue of statutory enactment, or upon principles of equity, would, when reduced to judgment, become a lien upon the property of such corporation prior in law or equity to the lien of any mortgage or deed of trust authorized to be made by any of the statutes of this state, such judgment shall be and remain a prior lien upon such railroad property, notwithstanding any sale or conveyance of such property by virtue of any judgment or decree of foreclosure founded upon a breach of the terms and conditions of any such mortgage or deed of trust : O. 1890,3398a.

Provided, further, that such reorganization shall in no wise affect any liability against the old corporation existing at the time of the organization of said new company : Kan. 23,120 ; Tex. 1889, p. 131 ; 1891,86.

"The debts due to and by, and claims against, the said first company mentioned in the preceding section, shall be subject to the provisions contained in section eleven hundred and three, and the said company, notwithstanding its dissolution, shall, as to said debts and claims, have the powers and perform the duties prescribed by that section, and be served with process as therein provided : " Va. 1235.

Provided, however, that nothing in this act shall be construed to authorize any such corporation to receive subscriptions of stock from counties, towns, or cities in this state : Ky. p. 767, § 1.

Provided, that no mortgage executed by the corporation organized under this act

shall protect its property from the collection of claims for damages done by its engines and cars to the persons or property of citizens of this state ; and also provided, that no exemption from taxation which may be contained in said charters and amendments shall be construed to continue for a longer period than twenty years from the date of said filing, and in no event beyond twenty years : Miss. 1882,25. Compare § 8552.

§ 8934. **Other Powers of New Company.** A company formed under this chapter shall, from the time its articles of association are filed, be a corporation, vested with (1) the powers, rights, privileges, and franchises for maintaining and operating its railroad, etc., which were vested in the corporation mortgaging it, and shall be subject to like duties and liabilities, and to future legislation : Me. 51,106 ; Vt. 3470 ; 1890,23 ; N.J. R.Rs. 56,167 ; 1887,125 ; Ind. 3938,3947 ; Mich. 3314 ; Wis. 1828 amt. ; Md. 23,188 ; Tenn. 1260 ; Ky. p. 767, § 1 ; Col. 1885, p. 150 ; Miss. 1882,25,3. And see §§ 8925, 8930.

(2) The right to have, hold, and operate the property and franchises so purchased, with all powers, rights, privileges, and immunities, and subject to all the restrictions, imposed by the original charter and amendments thereto : Tenn. 1355 ; Ark. 5451 ; Kan. 23,120.

(3) It may issue new stock "to represent the property in such railroad : " Mich.

It shall be entitled to exercise all the franchises, powers, rights, and privileges, and shall be subject to all limitations, restrictions, and liabilities, contained in the charter as they existed at the time of such sale : N.J. R.Rs. 167 ; 1887,125 ; Pa. 1885,164 ; Kan. 23,120 ; Ky. 56, I. App. ; Ark. 5455, Ga. 1689(i)(w) ; Miss. 1882,25,3.

Whenever the person so acquiring title under any such sale shall own or represent a majority in amount of the bonds, or other evidences of debt, secured by any such trust deed or mortgage, and shall also include the persons who owned, at the time of the sale, a majority in amount of the capital stock of such mortgagor corporation, such purchasers, and such corporation as they shall organize as aforesaid, shall also have, possess, and enjoy any exemption, privilege, or immunity previously granted by any law to such former corporation, relating to any of the property so acquired, to the same extent as if such latter corporation had been named in such law as the grantee thereof : Wis. 1828(10) ; Dak. 1879,46,9 ; Oka. 1036.

Such reorganized company has power, within six months after the organization, to assume such debts or liabilities of the original company, and make such adjustments or exchanges with any of its bondholders, and (within one year, O.) with any stockholder, as it may deem expedient, and may use for such purpose any bonds or stock which it is authorized to issue : O. 3397 ; Ind. 3938,3947.

It may issue such bonds at interest (not exceeding six per cent, N.J., Pa., O., Md. ; seven per cent, Ind., Ga.) as it deems expedient (not exceeding the amount of capital stock, N.J., Pa.), and secure them by mortgage of its property real and personal, and equipment, and all franchises, including (in N.J., O., Ind.) the franchise to be a corporation : N.J. R.Rs. 170 ; 1887,125 ; Pa. 1885,165 ; O. ; Ind. ; Md. 23,189 ; Ga. 1689(x) ; and sell them at such price as it deem expedient : Ga. It may issue stock to such an amount as it deem proper (not exceeding any limit fixed in the purchase agreement, Ind., S.C. 1423), and may establish preferences in respect to dividends in favor of any class of stock, and (in O., Ind., Ga.), if authorized by the agreement, confer upon bondholders the right to vote, not exceeding one vote for each fifty dollars (one hundred dollars, Ind., Ga.) of bonds, as may have been provided for in the agreement : O. 3397 ; Ind. 3938, 3949 ; Col. 1885, p. 150.



It may establish a sinking fund : Ind. 3949 ; S.C. ; Ga. 1689(y).

If any part of the property is subject to a prior mortgage, the new corporation, at a meeting called for the purpose, may vote to redeem the same, and make an assessment therefor on all holders of stock and bonds : Me. 51,95.

And if any stockholder fail to pay, the treasurer may sell at auction enough of his stock to pay the same and twelve per cent damages ; and if a bondholder refuse, he cannot receive any "dividends" until he has paid the same, with twelve per cent interest : Me. 51,96.

The moneys so realized shall be applied solely to the redemption of such prior mortgage ; any surplus goes to the new corporation : Me. 51,97.

And such new corporation, or the majority of the bondholders, etc., may sue in equity and obtain foreclosure : Me. 51,110.

The capital stock of such new corporation shall equal the amount of the unpaid bonds and overdue coupons, together with that required to redeem any prior mortgage, and shall be in one-hundred-dollar shares ; and is full paid, and not liable to further assessment, nor the holder for debts of the corporation : Me. 51,111.

Any corporation, formed under this chapter by the holders of railroad bonds, may acquire by purchase the right of redemption under the mortgage securing such bonds : Me. 51,112.

Such corporation may at once take possession of and maintain and operate said railroad, subject to existing rights of other parties, and may, by purchase or otherwise, obtain the title and ownership or the use and benefit of the whole estate, and satisfy the undivided interests or claims of other parties interested ; and until the interests of such other parties are vested in such new corporation, said corporation shall be the trustee thereof, and shall be accountable therefor as tenants in common : Vt. 3471.

Such corporation, at a meeting of the stockholders called for that purpose, may increase its capital stock to an amount not exceeding double the amount of principal and interest of the bonds foreclosed, and designated in the articles of association : Vt. 3472.

If the trustees of the mortgagees have foreclosed and leased the road prior to the organization of such corporation by the bondholders, the lessees shall pay the rent that accrues after such organization to the treasurer of said corporation : Vt. 3473.

The stockholders of any railroad or canal, upon its sale under this chapter, may agree in writing with the holders of any bonds by said corporation thereafter issued and secured by a mortgage, that they shall have the right of voting at all meetings or elections as if stockholders, as many votes to be cast as by stockholders of par value equal to the amounts of their bonds, provided that every bondholder availing himself of such agreement, and voting, shall be subject to the same liabilities as a stockholder to the amount of his bonds : N.J. R.Rs. 83.

Such agreement must be stated in the certificate of organization, or in a supplementary certificate, signed by *all* the stockholders : N.J. R.Rs. 84.

In case the persons organizing or whose duty it may be to organize the new corporation, to be formed as provided in the first section of this act, shall have acquired title to the railroad property and franchises which may have been sold as in said section mentioned, pursuant to any plan or agreement for or in anticipation of the readjustment of the respective interests therein of the mortgage creditors and stockholders of the company owning, or which last owned, such property and franchises at the time of any such sale, and for the representation of such interests of creditors and stockholders in the bonds or stock of the new corporation to be formed, as provided for in said section, the said new corporation shall be authorized and shall have the power to issue its bonds and stock in conformity with the provisions of such plan or agreement. Said new corporation may, at any time within six months after its organization, compromise, settle, or assume the payment of any debt, claim, or liability of the former company, upon such terms as may be lawfully approved by a majority of the agents

or trustees intrusted with the carrying out of the plan or agreement of reorganization : N.J. RRs. 165.

When any railroad is sold under a decree of court, the purchasers organizing a new corporation may have five years in which to complete such road : Pa. 1885,155.

Such corporation may hold and exercise within other states the aforesaid powers, rights, franchises, and immunities, and such others as may be conferred upon it by any law of this state or of any other state in which it may do business ; and may hold meetings and act without the state to the same extent as it may do within the state on the line of said road, and may make by-laws, and alter and change them : Ind. 3949.

When such new stock is issued, the holders may proceed to elect officers, and thereupon the old officers shall be superseded and the old stock may be forfeited and cancelled on the books, and the new stockholders and officers shall be the new corporation, continuing under the charter and laws governing the old : Mich. 3406.

Such new corporation is not liable except for debts or obligations by it thereafter contracted ; but no prior mortgage or lease shall be affected by such proceedings, and all property shall remain liable for the debts of the old corporation which has not been sold, and no liability of any corporate director or other person shall be affected thereby : Mich. 3406.

Such reorganized railroad may sell, lease, assign, or transfer its stock, property, and franchises to, or consolidate the same with, those of any other railroad in this or any other state which makes with or forms a continuous line with such railroad, upon such terms as may be agreed upon ; provided such agreement is approved by two thirds of the stock at a special meeting : Md. 23,190.

It may also purchase or contract for the use and enjoyment in whole or in part of any other railroad line within or without this state, connecting or forming a continuous line with it : Md. 23,191.

Any corporation reorganized under this article has ten years from such reorganization to complete an uncompleted railroad : Md. 23,192.

If the state owned stock in the old road, the reorganized company must issue to it the same proportion of its new stock : Md. 23,193.

The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights, and privileges (but not immunity from taxation, W.Va.), and perform all such duties, as would have been had or should have been performed by the first company but for such sale and conveyance ; save only that the corporation so created shall not be entitled to the debts due to the first company, and shall not be liable for any debts of or claims against the said first company which may not be expressly assumed in the contract of purchase, and the whole profits of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock in the first company at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two successive weeks in a newspaper : Va. 1234 ; W.Va. 54,73.

The articles of such new company may provide for the issue of bonds at a rate of interest not exceeding eight per cent, and paid up capital stock not to exceed in the aggregate the original cost of the construction of a railroad and equipment purchased, and such sum as may be necessary to complete the same ; and may provide for priorities in the payment of interest, the number of such bonds or of dividends on different classes of such stock, and may regulate what right the different classes of stockholders and bondholders may have to vote ; and may exempt the latter from responsibility in conse-

quence of the exercise of such right ; and such bonds may be secured by mortgage : Ky. p. 767, § 2.

Such corporations shall also have power to establish sinking funds for the payment of its liabilities, and to issue capital stock to such an aggregate amount as it may deem necessary, not exceeding the amount named in its certificate of organization, and may make and issue preferred stock, and make and establish preferences in respect to dividends in favor of one or more classes of stock over any other class or classes, and secure the same in such order and manner, and to such extent, as such corporation may deem expedient ; and may confer upon the holders of any bonds which it may issue the right to vote at all meetings of its stockholders, not however exceeding one vote for each one hundred dollars of the par amount of such bonds, which right to vote, when once fixed, shall attach to and pass with such bonds under such regulations as such corporation shall prescribe, but shall not subject the holder to any call for or assessment of money made by such corporation, or to any liability for the debts of such corporation, or entitle any holder thereof to dividends ; and such corporation shall also have capacity to enjoy and exercise within other states the said powers, rights, immunities, privileges, and franchises, and such others as may be conferred upon it by any law of this or of any state in which any portion of its railroad may be situated, or in which it may transact any part of its business, and to make by-laws, rules, and regulations in relation to its business, and the number of its directors, and the times and places of holding meetings of its stockholders and directors and the same to alter and change as may be deemed expedient : provided, that such by-laws, rules, and regulations shall conform to the laws of this state : Ga. 1689(y).

Such new corporation may establish sinking funds and issue capital stock to such amount as may be necessary, not exceeding that named in the certificate, provided that it or its successors may amend said certificate by filing a new certificate according to section 1689(v) ; and provided further, that if the capital of any company formed under this section is found insufficient for constructing and operating its road, it may with the concurrence of two thirds of all the stockholders at an annual or special meeting increase the same to any amount required ; and if the stock provided for in the original certificate has not been issued and sold, or is in the hands of such railroad company, the purchasers may make such increase by merely filing a new certificate ; but said increase shall not exceed thirty thousand dollars per mile of road, and it may make and issue preferred stock, and establish preferences in respect to dividends in favor of one or more classes of stock over any other class or classes, and secure the same in such manner as it deem expedient, and confer upon the bondholders right to vote at meetings of stockholders, not exceeding one vote for each one hundred dollars of the par value of bonds, which right shall attach to the bonds and pass with them, under such regulations as the corporation shall prescribe ; but shall not subject the holder to any assessments or liability for debts, or entitle him to any dividends, and such corporation may exercise privileges and franchises within other states which may be conferred upon it by law of this or any state, and may make by-laws, etc., in conformity with law : Ga. 1883, p. 116.

Said new company may, at any time thereafter, amend its charter in respect to change of name, number of directors, and amount of capital stock subscribed, by a vote of two thirds of the capital stock subscribed, voting in favor thereof at a special meeting of the stockholders to be called for the purpose, and such amendments shall take effect from the date of filing a statement of the same, certified by the board of directors, in the office of the secretary of state : Miss. 1882,25,4.

§ 8935. **Special Cases.** Where two or more mortgages on undivided portions of a railroad, or part thereof, made by a railroad company to secure the payment of bonds, are foreclosed, and the legal title to the mortgaged premises vested in the mortgagees, according to their respective interests, the holders of a majority of the bonds under each of said

mortgages may form themselves into a corporation for the purpose of owning or maintaining and operating such railroad, or part thereof, for public use in the conveyance of persons and property, upon such conditions in regard to their respective interests as they may agree upon, and substantially in the manner provided in this chapter, so far as the same is applicable to such case; and holders of bonds under either of said mortgages, who do not join in such arrangement and become parties thereto, shall have the rights and remedies provided in this chapter, or otherwise in law or equity. Such new corporation shall have the rights, and be required to perform the duties, of a corporation, as if formed by bondholders under a single mortgage: *Vt.* 3477.

## CHAPTER VI.

### TELEGRAPH COMPANIES, STREET RAILWAYS, ETC.

#### **Art. 895. Telegraph and Telephone Companies.**

§ 8950. **General Principles, Rates, etc.** Persons, companies, and corporations engaged in the business of transmitting messages by telegraph lines are hereby declared to be common carriers, and as such shall serve the public without discrimination or preference, at reasonable rates of compensation: *Minn.* 2625.

They may charge such rates as they deem proper: *Nev.* 917.

The liability on cipher messages is the same as on others: *Ga.* 1887, p. 112.

It shall be the duty of every telegraph or telephone company to provide sufficient facilities at all its offices for the despatch of the business of the public, to receive despatches from and for other telephone or telegraph lines and from or for any individual, and, on payment or tender of their usual charges for transmitting despatches, to transmit the same promptly and with impartiality and good faith: *Mo.* 2725; *Wash.* 1890, p. 292.

It shall be the duty of every telegraph or telephone company, upon the receipt of a despatch at the point to which it is to be transmitted by said company, to deliver it (1) promptly to the person to whom it is addressed, where the regulations of the company require such delivery, or to forward it promptly as directed, when the same is to be forwarded. For every failure to deliver or forward a despatch as promptly as practicable the company shall forfeit one hundred dollars: *Va.* 1292.

(2) "Within a reasonable time," under penalty: *Miss.* 1886, 34.

When the party to whom a message is addressed resides or does business within the corporate limits of any city or village where a telegraph office is located, at the point of destination, the same shall be promptly delivered at his place of residence or business, if known. In other cases he shall be notified by next mail where he can find the same: *Minn.* 2627; *O.* 3465.

Such companies shall deliver all despatches by a messenger to the persons to whom the same are addressed, or to their agents, on payment of any charges due for the same: provided such persons or agents reside within one mile of the telegraph station, or within the city or town in which such station is: *Ind.* 4178.

Any telegraph company delivering a message shall state plainly upon such message the date and the hour at which such message was received at the original point for transmission: *Minn.* 2630.

It shall be the duty of all owners, superintendents, and operators to preserve the originals of all messages sent from such office, other than those intended for publication, for at least three years, and to produce the same in evidence whensoever duly

subpœnaed so to do by the individual or individuals or counsel of the individual or individuals sending or receiving a copy of such messages in any court of justice, or before any committee of the legislature: provided that the confidential communications between attorney and client, so transmitted, shall in no case be divulged: Pa. Telegraph Cos. 13.

It shall be unlawful for any telegraph company, its agents or operators, to demand, charge, or receive from any individual, association, or corporation a greater sum for the transmission and delivery of any telegram or message over a given distance than it demands, charges, or receives for the transmission and delivery of any telegram or message containing an equal number of words over a greater distance, providing that despatches transmitted during the night and despatches for publication in newspapers may be forwarded and delivered at reduced rates; such rates must, however, be uniform to all patrons for the same service: Neb. 1,89a,7.

It shall be unlawful for any telegraph company, association, or organization engaged in the business of forwarding despatches by telegraph to demand, collect, or receive from any publisher or proprietor of a newspaper any greater sum for a given service than it demands, charges, or collects from the publisher or proprietor of any other newspaper for a like service: Neb. 1,89a,8.

Every telegraph company and every press association engaged in the transmission, collection, distribution, or publication of despatches shall afford the same and equal facilities to all publishers of newspapers, and furnish the despatches collected by them for publication in any given locality to all newspapers there published on the same conditions as to payment and delivery: Neb. 1,89a,9.

**§ 8951. Order of Messages.** Messages delivered to the owner or agent of any telegraph line operated in this state, in whole or in part, shall be transmitted in the order they are received: Me. 53,1; Pa. Tel. Cos. 11; O. 3465; Ind. 4176; Ill. 134,7; Minn. 2628; Neb. 89a,5; Md. 23,228; Va. 1291; Tenn. 1541; Ark. 1885, 107; Ore. 4176; Nev. 919,941; Col. 329; Wash. 2361; Uta. 2312; Ga. 1889, p. 176.

Provided, however, that any messages (1) directing the movement of railroad trains, (2) in case of sickness or death, (3) and those relating to the administration of criminal laws, (4) and government despatches, shall take precedence, if the officer or person sending the same shall so request: Me., N.Y., Ind., Minn.

(5) News, sent under arrangement to newspapers, of general interest: N.Y., Md., Ga.

Criminal and police, then government despatches: Ore. 4165; Miss. 1069; La. D. 923.

Government despatches, then news: O., Va., Ark.

News and communications from officers of justice take precedence: Ind., Nev.

News and official business: Wash., Uta.

**§ 8952. Liability.** In the transmission and delivery of messages such persons, companies, and corporations shall be liable (1) for want of ordinary care, any contract, notice, or condition to the contrary notwithstanding; and any notice, condition, or contract stipulating for exemption from consequences of lack of ordinary care shall be void: Minn. 2626.

(2) For any error or unnecessary delay, to the amount paid on such despatch: Me. 53,1.

(3) For damages actually caused by their negligence up to one hundred dollars: Mass. 1885,380. To any amount: Ind. 4177; Tenn. 1541; Mo. 2729.

(4) Damages caused by disclosure: Ind. 4173; Tenn.; Mo.; Ark. 1885,107.

For wilful neglect to "transmit faithfully and impartially," the company is liable to the sender in a penalty not over one hundred dollars : Mass. 109,10 ; Md. 23,228 ; Ga. 1889, p. 175.

Five hundred dollars : Ark. 1885,107. For all damages : Col. 328. To forfeiture of its franchise : Ill. 134,6 ; Io. 1327 ; Col.

The proprietor of a telegraph is liable for all mistakes in transmitting messages made by any person in his employment, and for all damages resulting from a failure to perform any other duties required by law : Io. 1329.

If any person, persons, company, or corporation owning or operating a telegraph line, in whole or in part, within this state, shall fail to transmit any message within a reasonable length of time, or if it is shown due diligence has not been exercised after reception thereof for that purpose, or shall fail to deliver the same to the party to whom the same is addressed, if known, as provided for above, within a reasonable length of time after the same shall have arrived at the point of destination, it shall be liable in a civil action, at the suit of the party injured, for all actual damages sustained by reason of such neglect or omission, with the legal costs of suit to be recovered in such action, before any court having competent jurisdiction : Minn. 2629.

Nothing herein exonerates telegraph operators, clerks, agents, or officers from liability for fraud, or the company from any common law liability for neglect or wrongdoing of it or its agents : Me. 53,2.

Any telegraph company engaged in the transmission of telegraphic despatches is hereby declared to be liable for the non-delivery of despatches intrusted to its care, and for all mistakes in transmitting messages made by any person in its employ, and for all damages resulting from a failure to perform any other duty required by law, and any such telegraph company shall not be exempted from any such liability by reason of any clause, condition, or agreement contained in its printed blanks : Neb. 1,89a,12.

**§ 8953. Secrecy, etc.** It is commonly made a misdemeanor for any telegraph operator or officer to reveal the contents of a message : N.J. Tel. Cos. 12-13 ; Pa. Crimes, 115 ; Tel. Cos. 12 ; O. 3466 ; Ill. 134,7 ; Mich. 3708 ; Io. 1328 ; Neb. 89a,6 ; Md. 23,230 ; N.C. 1889,41 ; Tenn. 1542 ; Ark. 1826 ; 1885, 107 ; Nev. 922, Col. 329 ; Ga. 1889, p. 176 ; Miss. 1070. See in Part V.

So, forgery of a message is a misdemeanor. Nev. 923.

Or using or speculating with its information : Nev. 924.

Or to refuse or neglect to transmit or deliver the same : O. ; Ill. ; Mich. ; Io. ; Neb. 89a,11 ; Md. ; Tenn. ; Ark. ; Nev. 925 ; Col. ; Ga. ; Miss.

Or to wilfully delay : O., Io., Neb., Tenn. Or alter it : Nev. Or open it : Nev. 926.

Whoever shall transmit or cause to be transmitted by telegraph from any place in this state to any other place in this state, or elsewhere, any falsehood, knowing the same to be such, shall be fined in any sum not exceeding five hundred dollars : Ill. 134,8.

Two hundred dollars : Mo. 2728.

It is also a criminal offence to read or attempt to learn the contents of any message in process of sending, by tapping the wires, reading by sound, or other contrivance : Nev. 927.

**§ 8954. Location.** When a telegraph (or telephone, Ill, Wash.) company is authorized to locate its line over lands of others, damages, if the parties cannot agree, are determined (1) as in the case of railroads : Me. 53,4 ; Io. 1326 ; Kan. 23,228 ; Ark. 1885,107 ; Tex. 623. As with other corporations : Pa. Tel. Cos. 7 ; O. 3456 ; Ill. 134,3 ; Va. 1289 ; N.C. 2008-2012 ; Tenn. 1537 ; Mo. 2722 ; Col.

1885, p. 358; Wash. 1890, p. 292; Ga. 1889, p. 142; Ala. 1654; Fla. 193,6; La. D. 696; Oka. 1079.

(2) By the town officers: Mass. 109,4; 1884,306; Vt. 3637.

(3) By special commissioners: Mich. 3698; Ore. 4163; Nev. 920; Uta. 2299; Miss. 1886,38.

(4) By sheriff's jury: Md. 23,224-5.

With appeal to a jury: Mass. 109,6.

Any telegraph or (except in N.C., Tenn., Tex., Ore.) telephone corporation organized under this title has power and right to use the public roads and highways in this state, on the line of their route, for the purpose of erecting posts or poles on or along the same to sustain the wires or fixtures: provided that the same shall be so located as in no way to interfere with the safety or convenience of ordinary travel: Mass. 109,2; O. 3454; Ill. 134,2; Mich. 3697, 3718d; Io. 1882,104; 1324,1325; Minn. 2632; Kan. 23,227; Neb. 1887,87; Md. 23,224; Va. 1287; N.C. 2007; Tenn. 1536; Mo. 2721; Ark. 1885,107; Tex. 622; Cal. 5536; Ore. 4160,1; Nev. 917; Col. 1885, p. 358; Wash. 1890, p. 292; Ida. 2700; Uta. 2298; Ga. 1889, pp. 141 & 175; Ala. 1652; Miss. 1886,38; 1065; La. D. 696.

But only with consent of the county board: Ill. 134,4; Miss. 1066.

Or county court: W.Va. 54,48.

And of the city and town authorities: Mass. 109,3; Ill.; Col. 327; Oka. 1079.

But is responsible in damages to any person or corporation, which may, at its election, be assessed as for a perpetual use: Miss. 1068; Fla.

For easements acquired, see Vol. I., § 2258.

No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph over his lands to the exclusion of the lines of other companies: Mo. 2723; Ark. 1885,107; Tex. 624; La.

But otherwise it may make contracts for necessary easements: Ala. 1658; Miss.; Fla. 193,5.

All laws granting authority to erect poles and wires to telegraph companies, and to towns and cities power to regulate them, apply to electric light lines, so far as applicable: Mass. 1883,221.

A new statute of Pennsylvania provides for the recovery of damages to trees along the public highways by the owners of land adjoining them, when caused by the erection of poles and lines of telegraph, telephone, and electric light companies, to be estimated by special appraisers: Pa. 1891,168.

Every railroad operated in this state, and carrying freight and passengers for hire, or doing business in this state, is and shall be designated a "post road," and the corporation or company owning the same shall allow telegraph and telephone companies to construct and maintain telegraph and telephone lines on and along the right of way of such railroad: Wash. 1889-90, p. 292.

§ 8955. **Contracts** made by telegraph between two or more persons shall be considered as contracts in writing: Ind. 4180; Ore. 4168; Nev. 932; Wash. 2352; Uta. 2303.

Notice may be given by telegraph, or powers of attorney and legal instruments; and the despatch or a duplicate have *prima facie* effect like an original: Ore. 4169, 4170,4172; Nev. 933,934; Wash. 2353-4; Uta. 2304-5.

So of bills, checks, etc.: Ore. 4171; Nev. 935; Wash. 2355; Uta. 2306.

Warrants for arrest: Ore. 4173; Nev. 937; Wash. 2357; Uta. 2308.

Writs and papers in civil suits: Ore. 4174; Nev. 938; Wash. 2358; Uta. 2309.

The word seal or stamp, if telegraphed, shall take effect like a real seal: Ore. 4175; Nev. 938; Wash. 2359; Uta. 2310.

§ 8956. **Telephone Companies.** All such corporations shall have all the rights and powers conferred, and be subject to all the liabilities and duties imposed, by the general laws of this state upon telegraph corporations: Kan. 23,5d; Md. 23, 232; Mo. 2716-2733.

The provisions of this chapter shall apply also to any company organized to construct any line or lines of telephone; and every such company shall have the same powers, and be subject to the same restrictions, as are herein prescribed for magnetic telegraph companies: O. 3471.

Such company may have a common seal, which may be altered at pleasure; and shall have power to acquire, by purchase or otherwise, and hold and convey, such real and personal estate as may be proper for the purpose of erecting and maintaining its lines of telephone and the appliances and buildings requisite for its business; and shall have the right to acquire such real estate and rights of way as may be necessary for its business, under the writ of assessment of damages, as fully as if the act in relation to said writ were incorporated in this act and made part of the same. The life of a corporation organized under this act shall be limited to fifty years: Ind. 4187.

A telephone company shall not be liable for errors in messages or communications, except when such messages or communications are transmitted under contract directly by the agents or employees of the company; nor shall it be liable for any special damage sustained by a failure of its instruments to work, beyond a rebate of the rent charged for the time such instrument failed to work: Ind. 4190.

Every telephone company with wires wholly or partly within this state, and engaged in a general telephone business, shall within the local limits of such telephone companies' business supply all applicants for telephone connections and facilities with such connections and facilities without discrimination or partiality, provided such applicants comply or offer to comply with the reasonable regulations of the company; and no such company shall impose any conditions or restrictions upon any such applicant that are not imposed impartially upon all persons or companies in like situation, nor shall such companies discriminate against any individual or company engaged in any lawful business, or between individuals or companies engaged in the same business, by requiring as a condition for furnishing such facilities that they shall not be used in the business of the applicant, or otherwise for any lawful purpose: Ind. 4192a; Ark. 1885,107,12.

Similar statutes have been passed in Mich. 3718i; Wis. 1791a.

Any operator, clerk, servant, messenger, or employee of any telephone company doing business in this state who discloses the contents of any despatch or message, or any conversation had between persons while using the line of any telephone company, except to a court of justice or to a person entitled to know the same, shall be fined not more than five hundred dollars, nor less than ten dollars: Ind. 4192d.

Where any two cities or villages are connected by wire operated or owned by any individual, company, or corporation, the price for the use of any telephone for the purpose of conversation between such cities or villages shall not exceed fifteen cents for the first five minutes, and for each additional five minutes no sum exceeding five cents shall be charged, collected, or received: Ind. 4192f.

No individual, company, or corporation, now or hereafter owning, controlling, or operating any telephone line in operation in this state, shall be allowed to charge, collect, or receive as rental for the use of such telephones a sum exceeding three dollars per month where one telephone only is rented by one individual, company, or corporation. Where two or more telephones are rented by the same individual, company, or corporation, the rental per month for each telephone so rented shall not exceed two dollars and fifty cents per month: Ind. 4192e.

Telephone companies letting instruments are forbidden to ask from other companies more than four dollars per month rent, and are required to permit all other com-



panies to use and rent their instruments, except, if they are operating lines between the same points, they are not compelled to rent their instruments to rival companies : Ark. 1885,130.

#### **Art. 896. Street Railways.**

[Not incorporated in this edition.]

Such corporations are bound by all the laws of the state affecting the proprietors of railroads : N.H. 158,2.

And so in many states.

#### **Art. 897. Elevated Railways.**

[Not incorporated in this edition.]

Nothing in this article (Chap. II. of this book) shall apply to or authorize the construction of any elevated railroad, or of any other railroad except a surface road ; and no elevated railroad company shall be incorporated except under a special charter : Md. 23,186. And see § 8500.

#### **Art. 899. Taxation.**

§ 8990. **Franchise Tax.** Railroad companies are subject to a state franchise tax (which may or may not be exclusive of all other taxes, see § 8991), (1) of one half of one per cent upon all gross earnings : N.Y. 1881,361,6 ; Md. 81,146.

(2) So, of eight tenths of one per cent : Pa. Taxes, 207.

(3) Of one per cent : N.C. 1889,216,37. Of one per cent in the case of railroads of the state, and organized under other states, upon business done within it : Md. 1890,245 & 559.

(4) Of three per cent, or two per cent during the first five years after operation : Dak. 1883,99. So, of three per cent for five years, and two per cent thereafter : N.D. 1890,134.

(5) Of three fourths of one per cent upon the capital stock : Mich. 1218.

(6) Railroads are taxed like other corporations, but upon such proportion of their stock as corresponds to their mileage lying in the state only : Mass. 13,40.

(7) All railroads incorporated or doing business in the state, or persons operating railroads, pay an excise or franchise tax, determined by taking the average gross receipts per mile for the preceding year from transportation ; if not over \$2,250 per mile, one fourth of one per cent on such total gross receipts ; if from \$2,250 to \$3,000, one half of one per cent ; and thereafter increasing the tax one fourth of one per cent for each \$750 of average gross receipts per mile, or fraction thereof ; but never over three and one fourth per cent in all. If the line is partly within and partly without, a proportionate fraction is taken : Me. 6,40-2.

The buildings within or without the right of way, and lands and fixtures outside the right of way, are subject to taxation by the cities and towns where they lie, like other property : Me. 6,4. See § 8991. And shall be regarded as "non-resident land" : Me.

(8) The commissioner of state taxes appraises the franchises and property of railroads in their entirety, and if the railroad extend beyond the state, the value of the whole is apportioned according to the length within the state, and a state tax of seven tenths of one per cent is assessed upon such appraisal, with appeal to a commission consisting of the lieutenant-governor, the auditor, and the secretary of state. But in view of this tax any company may annually pay to the state two and one half per cent of its entire gross earnings within the state : Vt. 1890,3,11-18.

(9) A tax of one half of one per cent on the cost of the road as determined below (§ 8991) is to be paid annually : N.J. R.Rs. 107.

Railroads and transportation companies, telephone and telegraph companies, etc., pay a tax of eight mills upon the dollar of their gross receipts from traffic transported wholly within this state : Pa. 1889,332,23.

(10) In Michigan railroads pay a tax upon all gross receipts not exceeding two thousand dollars per mile of two per cent, and on the excess above two thousand dollars per mile, two and a half per cent ; such earnings to be determined by the last report of the railroad to the commissioners : Mich. 3358-60 amt.

(11) In Wisconsin, four per cent of the gross earnings of all railroads whose such earnings exceed or equal three thousand dollars per mile of operated road per annum : five dollars per mile of operated railroad of all railroads whose gross earnings exceed fifteen hundred dollars per mile per annum, and are less than three thousand dollars per mile ; and, in addition, two per cent of their gross earnings in excess of fifteen hundred dollars per mile per annum ; five dollars per mile of operated road by all companies whose gross earnings are less than fifteen hundred dollars per mile per annum : Wis. 1213.

(12) In Delaware there is a special tax of ten cents on every passenger passing through the state : Del. V. 12,453 ; and also of a gross annual sum in lieu thereof : Del. V. 14,367 ; and a tax of ten per cent on net earnings, and on cars, locomotives, etc. : Del. V. 13,392 ; besides special laws applying to certain roads : Del. V. 14,368.

(13) No railroad or canal company shall be liable to this tax if its property is taxed, but every railroad or canal company incorporated under the laws of, or doing business in, this state which is liable to a tax upon the value of shares of capital stock and personal property, but exempt from a tax upon its real estate held for right of way, station places, and workshop locations, shall, in addition to other taxes, pay a tax upon said corporation equal to one half of one per cent upon the gross receipts of said company : N.C. 1889,216,37.

(14) "Of railroad companies, not paying an *ad valorem* tax to the state." Each company operating or controlling four hundred miles or more of road in this state, for taking up and transporting freight and passengers from one point in this state, per annum, is taxed, \$10,000 ; each company operating or controlling from one hundred to four hundred miles of road, \$5,000 ; each company operating or controlling from twenty-five to one hundred miles of said road, \$500 ; each company operating or controlling less than twenty-five miles of road, \$100 : Tenn. 1889,130.

(15) The several railroads and other incorporated or unincorporated companies of every kind, except banks, which are not exempt by their charter or otherwise, or for which there is not a different method of taxation specially prescribed, pay the same rate per cent upon the whole amount of their capital stock paid in as is levied on other capital, together with the same rate per cent upon their net annual profits : Ga. 816.

The several railroads, by whose charters a higher tax is forbidden, and such as are now or may hereafter be in operation that do not pay a dividend exceeding six per cent, shall pay only one half of one per cent upon the net annual income of each until they pay a dividend of eight per cent per annum, in which shall be included the reserved fund, at which time they are to be taxed as other capital : Ga. 818.

(16) So there is a special tax of one hundred dollars per mile which companies may elect to pay in lieu of the property tax (§ 8991) : Miss. 1884,22.

The above franchise tax is said to be in lieu of all other taxes, state and municipal, on either stock or property : Mich. 1219 ; 1891,174 (but see below) ; Dak. 1883,99.

In lieu of all *state* taxes : Md. 81,154.

§ 8991. **Property Tax : Assessment.** (A) In many states the property of rail-ways is assessed by the state board of equalization,<sup>a</sup> except lots of real estate and improvements thereon, and depots, machine-shops, and other improved property located and taxed in any county<sup>b</sup> : Io. 1317 ; Neb. 1,77,39 ; Mo. 7723,7728 ; Cal.

3665; Col. 2847; N.D. 1890,135; Ida. 1463; Mon. G. L. 1675; 1891, p. 76,11; p. 80,14; Wy. 3839; Ala. 494,503; Fla. 174,78; 1891,4010,49 & 51; Ariz. 2649.

(B) The executive council assesses the property of every railway in the state excepting real estate not used in the operation of a railway: Io. 131,7.

So, the board of public works: W.Va. 29,67.

The board of railroad assessors: N.J. 1891,98; Kan. 107,26; Tenn. 669; Nev. 1891,51,10; Miss. 600.

The railroad commission: Ky. 92,3,3; Ark. 5647; 1887,92.

The state board of equalization: Ind. 1891,99,137; S.D. 1891,14,50; Wy. 1891,99; S.C. 186. See (A) above.

The treasurer, auditor, and governor: N.C. 1889, 218,22.

The county auditors of the several counties in this state in which any railroad company now has or hereafter may have its track and roadway, or any part thereof, shall constitute a board of appraisers and assessors for such railroad company; any railroad company having its road or any part thereof in one county only, the auditor of such county shall constitute such board: O. 2770.

It is assessed by a state board, the length and value of the main stem and value of other real estate, or other personal property, and of the remaining property, including the franchise, separately; and a deduction for mortgage or debts is allowed *pro rata* from the valuation of each class. The railroad pays the state a tax of one half of one per cent upon its total valuation, and to the counties and other municipalities in each district a tax upon the valuation of its property separately valued in such district not exceeding one per cent: N.J. 1888,208; Suppl. R.Rs. 20.

(C) The right of way, including side tracks, superstructures, turn-outs, turntables, telegraph poles, and other appliances, and the stations and improvements of the railroad company on such right of way (except machinery, stationary engines, and other fixtures, which shall be considered personal property), are held to be real estate for the purpose of taxation, and denominated "railroad track:" Ind. 6362; 1891,99,28; Ill. 120,42; N.C. 1889,218,49; Ark.; Nev. 1196; Wash. 1891,140,29-31; Oka. 6157.

It is held personal property: Neb.

The value of such "railroad track" is listed and taxed in the several counties and towns in the proportion of the length that the main track in such county or town bears to the whole length of the road in the state: Ind. 6363; 1891,99,78; Ill. 120,43; Neb. 1,77,40 & 85; N.C. 1889,218,50; Ark. 5650; Wash. ib. 31. Except that the value of side or second tracks, turn-outs, stations, shops, and buildings shall be taxed in the county or town where they are: Ind., Ill., Neb., N.C.

But in other states it is assessed by each county assessor as to the part in his county, having regard to its value as part of a completed road: Nev. 1198; Oka. 6158.

The movable property belonging to a railroad company shall be held to be personal property, and denominated, for purposes of taxation, "rolling stock": Ind. 1891,99,80; Ark. 5651; 1887,92,22; Ore. 2746; Wash. ib. 32; Oka. 6159.

Rolling stock is listed and taxed in the several counties and towns in the proportion that (1) the main track in such county and town bears to the total length of main track used or operated by the company whether owned or leased by them: Ind. 6364; Ill. 120,45; Ark. 5653; Tex. 4687; Ore. 2746; Nev. 1195; Wash. ib. 33; Wy. 1891,99; Uta. 2015; S.C. 182,187; Oka. 6160.

(2) That the value of the whole property, real and personal, of the company is to the value of the property located in such particular municipality: Ga. 1890,96.

It shall be the duty of each board to proceed to ascertain all the personal property,

which shall be held to include road-bed, water and wood stations, and such other realty as is necessary to the daily running operations of the road, moneys, and credits of such company, and the undivided profits, reserved or contingent fund of said company, whether the same may be in moneys, credits, or in any manner invested, and the actual value thereof in money; and also locomotives and cars not belonging to the company, but hired for its use or run under its control on its road by a sleeping-car company or other company; but as to such rolling stock not belonging to it, but under its control, the railroad company may return the same separate from its own property, and, if so returned, the board shall fix the valuation of such property separated, but include the amount in the aggregate valuation: O. 2772.

The value of such property, moneys, and credits of any railroad company, as found and determined by such board, shall be apportioned by said board among the several counties through which such road, or any part thereof, runs, so that to each county and to each city, village, township, and district, or part thereof therein, shall be apportioned such part thereof as shall equalize the relative value of the real estate, structures, and stationary personal property of such company therein, in proportion to the whole value of the real estate, structures, and stationary personal property of such railroad company in this state; and so that the rolling stock of such company shall be apportioned in the same proportion that the length of such road in said county bears to the entire length thereof in all said counties or county, and to each city, village, and district, or any part thereof therein: O. 2774.

In Illinois, not only the railroad track and rolling stock are thus taxed, but the aggregate amount of capital stock of railroads and telephone companies, as assessed by the state board of equalization, is distributed proportionately to the several counties in like manner that the railroad track is distributed, and among the towns, villages, and other taxable districts, and becomes part of their property respectively subject to taxation: Ill. 120,109-110.

**Method of Tax.** (A) The road is thereupon assessed at a fixed value per mile, and taxable in the same way as the property of individuals within counties, towns, etc.: Io. 1320; Kan. 107,34 & 38; Neb.; Ky. 92,3,4; Mo. 7725; Ark.; Cal. 3665; Nev. 1891,51; Col. 2847; Wash. 1891,140,29; N.D.; S.D. 1891,14,53-54; Ida.; Mon. G. L. 1675; Wy.; S.C. 182; Miss. 600; Fla.; Ariz.

The state board report *what* property shall be taxed in each county; but it is there assessed locally, upon ordinary rules, as if not railroad property: Ala.

At every general appraisal of real estate the governor appoints three disinterested persons to appraise the road-bed of the several railroad companies "at their true value in money" per mile, exclusive of depots and buildings, which is then subject to local taxation for mileage in towns and counties: Vt. 314,315.

But real and personal estate used in operating a railroad is no longer subject to listing for taxes: Vt. 1882,1,29; 1886,5; 1884,9.

And if and while the legislature shall provide for a tax on per centum of gross earnings of railways, then this property tax law is inoperative (see § 8990): N.D. 1890,135.

The said property shall be valued at its true cash value, and such assessment shall be made upon the entire railway within the state, and shall include the right of way, road-bed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, the board shall take into consideration the gross earnings per mile for the year ending January the first preceding, and any and all other matters necessary to enable it to make a just and equitable assessment of said railway property: Io. 1319; N.D. 1891,14,53; Mon. G. L. 1675.

If a part of any railway is without this state, then, in estimating the value of its rolling stock and movable property, they shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the

business of the railway without the state ; such valuation shall be in the same ratio as that of the property of individuals : Io.

The said board shall first determine the value of railroad track, as defined above, and then the value of rolling stock. The aggregate value of the capital stock shall then be determined, and value of franchise ascertained as made by governor, auditor, and treasurer of state, from which shall be deducted the total assessed value of all real and personal property, "railroad track," and "rolling stock," and the proportion of such stock after such deductions held by non-residents or by said company as a sinking fund to meet its indebtedness. The aggregate value of "railroad track," "rolling stock," and "shares of capital stock" as thus determined shall be apportioned in the same proportion that the length of such road in each county bears to the entire length thereof : N.C. 1889,218,50.

All railroad companies operating railroads lying partly in this state and partly in other states, shall be taxed as to the rolling stock thereof and other personal property appurtenant thereto, and which is not permanently located in any of the states through which said railroads pass, as follows : said railroad companies shall be liable to pay taxes on so much of the whole value of said rolling stock and said personal property as is proportional to the length of the said railroad in this state, without regard to the location of the head office of such railroad companies : Ga. 1882-3, p. 42.

**(B) Localized Property.** The property, real and personal, of each and every railroad company in this state working its road by steam, is assessed and taxed for county and municipal purposes in the same manner as the property of individuals is now assessed and taxed : Md. 23,204 ; Del. V. 18,241 ; Tex. 4678 ; Mon. 1889, p. 221, § 3 ; 1891, p. 89,14 ; Uta. 2015 ; La. 1888,92.

*Except only* the right of way or road-bed (exclusive of building thereon) : Del.

In addition to this, railroads pay a tax on the value of their real estate (excepting in the road-bed one hundred feet in width, N.J.), improvements thereon, and personal property in the counties, cities, and towns wherein it lies, in the same manner as other persons : N.J. R.Rs. 107 ; Md. 81,155.

All other personal property, including tools and material, machinery, or stationary engines, is listed and taxed in the county and town where they are on April or May 1st of each year ; and all other realty is listed and taxed in the county and town where it lies : Ind. 6365-6366 ; Ill. 120,46 ; Ark. 5654 ; 1887,92 ; Wash. 1891,140,34.

Other real estate, not used for railroad purposes, is assessed and taxed locally like property of individuals : N.Y., N.J., Kan., W.Va., Cal., Mon., Wy., Ala., Miss., Fla. 1891,4051. And so probably in all states.

All lands, tenements, hereditaments, and real estate acquired by any such company, not used by it for the immediate use and occupancy of its rails, tracks, depot, and freight buildings, shall be subject to the same tax as the property of individuals : N.J. Suppl. R.Rs. 20 ; Io. 808.

All lands lying within the state of Iowa, which have been heretofore granted or may be hereafter granted to any railroad company or corporation by the general government or by the general government to the state of Iowa, and by the state granted to any such railroad company or corporation, shall be subject to assessment and taxation within the counties wherein situated from and after the year the same may be earned, to the same extent as though patents had been issued to, and the title of record was in, such railroad companies or corporations : Io. 1884,28.

Such real estate as is owned and can be conveyed by such corporations under the laws of this state, and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, is taxed locally : Mich. 1891, 174,1.

Such real estate so excepted shall be liable to taxation in the same manner, and for the same purposes, and to the same extent, and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities within which the same may be situated: Mich. 1891,174,1; Ariz. 2649.

All distributable property is taxed by the railroad tax assessors; all localized property by the county and town assessors. The road-bed, rolling stock, franchises, choses in action, and personal property having no actual situs, is known as distributable property, and is taxed at its value per mile wherever situated: Tenn. 685,687.

The depot buildings, yards, grounds, and other property, real, personal, and mixed, having an actual situs, is (known as localized property, Tenn.) taxable by the municipal assessors where situated: Tenn. 694; Ga. 1890,96.

In Arkansas the railroad is taxed upon its other property, real and personal, according to the returns of its officers and the railroad commissioners wherever it may be, except rolling stock: Ark. 5654; 1887,92.

**Limitations.** This tax is in lieu of all other taxes except upon real estate which can be conveyed by such corporation and is not actually occupied in the exercise of its franchises for any necessary use, or in the proper operation of its road: Mich. 3360 ant.

Provided that no extra assessment shall be made, and no extra or special tax shall be levied or collected, on any bridge or bridges over streams, or on any tunnel forming any part of the roadway of any railroad or railroads in this state, it being the meaning and intent of this section that any bridge over streams, or any tunnel forming a portion of the roadway of any of said railroads, shall be valued at the same rate that any other equal portion of said road is valued: Md. 23,204.

Provided further, that the rate of taxation fixed by this act or any other law of this state shall not apply to any railway or railroad company hereafter building and operating a line of railroad within this state north of parallel forty-four of latitude, until the same has been operated for the full period of ten years, unless the gross earnings shall equal four thousand dollars per mile, except in so far as said line so built shall extend south of said parallel: Mich. 1891,174,1.

NOTES. — <sup>a</sup> The comptroller. <sup>b</sup> It appears that the state board assess such property also: Ala.

§ 8992. **Returns for Taxation.** (Compare § 8562.) For the purpose of taxation railroads must each year report the value of the railroad and rolling stock: N.C. 1889,218,22; Ark. 5649; 1887,92; Wash. 1891,140,32; Ida. 1463; Mon. G. L. 1675; Wy. 1891,99; Ala. 494; Fla. 1891,4010,49; Oka. 6159.

Every year a railroad is required to return a full and correct inventory of its rolling stock, and all other personal property, and all real estate other than "railroad track": Ind. 6367; 1891,99,76; Ill. 120,48; Wash. 1891,140,36.

And of its "railroad track," with length, weight of rails, ties, etc., etc.: Ind. 1891, 99,85; Ill.; Wash.

A statement of its capital stock, amount paid up, market or real value, indebtedness, and listed valuation of tangible property: Ill., Wash.

Railroads are required to list a schedule (with the auditor, Ky.), showing their property held for right of way, length of main track, and all side and second tracks and turnouts in each county and in each city or town, with the value of improvements: Ind. 6361; 1891,99,77; Ill. 120,41; Kan. 107,29; Neb. 1,77,39; N.C. 1889,218,48; Ky. 92,3,1; Ark. 5649; Tex. 4686; Nev. 1195; 1891,51; S.C. 180; Oka. 6155-6.

Also of the gross and net earnings: N.C. 1889,216,37; Nev.

And the capital stock and debt: Nev.

All officers of the road must furnish the state board a report annually, showing the number of miles, the value per mile, and the detailed statement of all property, rolling stock, and the operation of the road during the year: Io. 1318; Tenn. 678,679; Cal. 3664; Col. 2847; S.D. 1891,14,52; Ida. 1463; Mon. 1891, p. 88,43; Wy. 3839; Fla. 174,78; Ariz. 2649; Oka. 6163.

For purposes of taxation, a railroad must return on the first Tuesday of May a report specifying its real estate, with length of road and description of buildings and other lines than the main stem, and of its rolling stock and personal property, and the amount of its capital stock authorized and number of shares, the amount of stock paid up, mortgage value, or, if none, the actual value, and the amount and particulars of indebtedness: N.J. 1888,208,17; Miss. 597.

The officers of the railway are required to furnish the assessors a statement of miles owned, value of equipment, gross earnings, etc., to make a basis for such assessment: O. 2772; Wis. 1211; Io. 1318.

So, the statement or report furnished under Art. 858 is made the basis: W.Va. 29,67.

Every railroad must make return to the commissioner of state taxes of its gross and net earnings, length of road, kind and weight of rail and ties, list of rolling stock, amount and value of its capital stock, funded and floating debt secured by mortgage or otherwise, market value of stock and bonds, and amount of dividend and interest paid: Vt. 1890,3,11.

Each company owning and occupying any right of way or easement in lands, either by agreement with the owners or by virtue of any appropriation proceeding, shall present to the auditor of the county in which such land is situate a statement of the quantity of land embraced within such right of way or easement, and such quantity shall be deducted by the auditor from the land on the tax duplicate, so that the owners thereof shall not be required to pay taxes thereon; a company hereafter becoming the owner and occupant of any such right of way or easement shall, within six months thereafter, present such statement to the auditor; and upon the failure of the company to make such statement, the owner of the land may make the same: O. 3321.

**§ 8993. Special Cases.** When a railroad lies partly within and partly without this state, there shall be paid such portion of the tax herein imposed (1) as the length of the operated road lying within this state bears to the whole length of the operated portion thereof: O. 2776; Mich. 3360 amt.

(2) As the mileage of trains run in the state bears to that of the entire main line: Vt. 1882,1,11.

All railroad companies located in other states, and having a terminus or any part of its road in this state, shall be taxed as follows. If such railroad companies have a terminus in this state, they shall be liable to pay taxes on all their property in this state, except their right of way and track, including bridges; and if they have no terminus in this state, such railroad companies shall pay a tax upon their net earnings as railroad companies of this state, in the proportion that the length of the road in this state bears to the whole length of said road: provided if in any case the tax upon the net earnings of such companies shall amount to a greater sum than a tax upon their property, then the said company shall pay the tax upon their earnings: Ga. 819.

That all railroads which may hereafter be built within this commonwealth under existing charters, or under charters which may be hereafter granted, shall be exempt from all taxation under the laws of this commonwealth for a period of five years from the date of the beginning of the construction of such new roads: Ky., p. 1029,VIII.

So for twenty years, if built without subsidies: Ariz. 1891,41.

Any railroad claiming exemption from taxation by law or its charter may, by

waiving such exemption, receive a release from the state of its right to take or purchase the property or any part thereof: N.J. 1890,169.

No bill to incorporate any railroad company, or to alter, amend, change, or modify any act of incorporation of any railroad company, other than one in which the state is a stockholder, shall be introduced into either house of the general assembly unless accompanied by the receipt of the state treasurer for twenty-five dollars; and the same shall be placed to the credit of the public school fund. N.C. 2004, amt.; 1885,33.

§ 8994. **Cars, etc.** Furthermore there is a tax of three dollars per mile of railroad over which any Pullman palace or sleeping car is run: Ark. 1887,128.

Provision is made for the taxation of sleeping and dining cars not owned by the railway, but used in this state, according to the proportion of mileage run during the year preceding by such cars in the state: Io. 1878,114,1; Kan. 107,30; Neb. 1889,75.

Every sleeping-car or parlor-car company whose cars are run on any railroad in this state shall pay to the state treasurer annually, on the first day of June, a tax of five hundred dollars: N.C. 1889,216,10.

## TITLE III.—MANUFACTURING COMPANIES.

### Art. 900. General Provisions.

§ 9000. **Construction of Title.** All manufacturing corporations hereafter created shall be subject to the provisions of this chapter: Mass. 106,3; R.I. 155,27; Dak. Civ. C. 511; S.C. 1885,105,1.

Manufacturing corporations have generally all the powers, duties, obligations, and liabilities contained in this Title and Title I., and in their charters: Me. 48, 1 & 19; Dak.

So also corporations chartered under Mass. statutes 1870, C. 224; 1866, C. 187 & C. 290; Gen. Stats. C. 60, C. 61; 1851, C. 133; Rev. Stats. C. 38; and under special charters for manufacturing purposes since Feb. 23, 1830: Mass. 106,3.

This chapter shall be known as the business corporation law, but no corporation shall be formed under it for the purpose of carrying on any business which might be carried on by a corporation formed under any other general law of the state authorizing the formation of corporations for the purpose of carrying on such business: N.Y. 1892,691.

In Michigan there is a special statute for private associations and partnerships for mining and manufacturing, besides the general statute for manufacturing corporations. This statute provides for the association of five or more persons for mining or manufacturing iron, copper, or other materials; it provides for management of the company by trustees, with yearly reports. The capital stock is not to exceed one hundred thousand dollars. The stockholders have power to make by-laws. The company is not dissolved by the death of any of its stockholders; and suits are instituted in the name of the president or any one trustee for the time. Business must be carried on within the state, and there is a specific tax of four per cent on all ores and products of mines except that upon iron ores, which is only two per cent: Mich. 3984-4000.

In Minnesota there are three separate statutes applying to manufacturing corporations besides "corporations empowered to take private property," which latter class rests generally on chapter thirty-four of the General Statutes, covering from section 2448 to section 2637 in Kelly's Revision of 1891. The first is "Corporations for pecuniary profit other than those noted in Title I.," to be found in sections 2638 to



2649 of Kelly's Revision. The provisions for this kind of corporation will be found in this chapter, as well as in chapter 1 above, and where any provision is peculiar to such kind of corporation, it is noted "a" throughout this chapter.

The second is for "Corporations for manufacturing or mechanical business," being the Act of 1873, Chapter 11, and contained in sections 2650 to 2671 of Kelly's Revision. Where provisions in this chapter are peculiar to corporations under that act, they are noted "b."

The third is for "mining and manufacturing" corporations, being the act of 1876, chapter 28, comprising sections 2672 to sections 2682 of Kelly's Revision; and when provisions in this chapter are peculiar to corporations created under that act, they are noted "c."

The provisions of all three statutes of Minnesota are, however, in many respects identical.

"The provisions of sections (Kelly's Revision) 2450, 2451, 2454, 2455, 2456, 2457, 2458, 2459, 2464, 2465, shall apply to and be observed by corporations organized under this title:" Minn. 2639.

It shall be unlawful for any corporation doing business in this state at any time, or for the officers, agents, or others, to move, abandon, or discontinue in any way, to any material extent, any factory, workshop, office, agency, or other establishment, or the work or business carried on therein, from or in any city, town, or other place within this state, without first repaying and restoring any and all money, bonds, lands, and other property which have been, or shall hereafter be, given or granted as a consideration or inducement for the location or construction, operation, enlargement, or maintenance at any such city, town, or place of such factory, workshop, office, agency, or establishment, or of the work or business carried on thereat; and such repayment or restoration must include and be accompanied by the payment of lawful interest on such money, bonds, lands, and other property, or upon the proceeds or reasonable value thereof, for the full period that shall have elapsed between the date of the original gift or grant and such final repayment and restoration: Mo. 1891, p. 85.

**§ 9001. Charters.** The incorporation of any association of persons for the purpose named in this section shall be held and taken to be of the same force and effect as if the powers and privileges conferred and the duties enjoined had been conferred and enjoined by special act of the legislature; and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter; and no modification or repeal of this act shall affect any franchises obtained under the provisions of the same: Pa. Iron Mfg. Cos. 5.

The act of incorporation of every such company for manufacturing or mining shall be in force for thirty years from the passage thereof, and no longer, and may, at any time after fifteen years from the organization of the company, be amended or repealed, at the pleasure of the general assembly. Any such act of incorporation heretofore passed, which the general assembly now has or may hereafter have power to amend, shall be deemed to be amended by this chapter now or whenever such power shall exist: Va. 1143.

**§ 9002. Manufacturing companies already existing** may adopt the provisions of this chapter (1) at a meeting called for the purpose by majority vote of all the stock: Mass. 106,3,4; R.I. 155,17; N.Y. 1892,691,4; Tenn. 1865; Mo. 2780.

(2) By mere certificate, filed by the president and directors: N.J. Suppl. Corps. 56; Pa. Iron Mfg. Cos. 7.

Provided it has a capital stock of thirty thousand dollars: R.I.

A certificate of such vote must be recorded, as provided in § 9018: Mass., R.I., N.Y.

§ 9003. **Amendment and Repeal.** The charter of any corporation which is subject to the provisions of this chapter may be revoked by the general court for any cause which it deems sufficient, and the provisions of this chapter may be amended or repealed so as to affect existing corporations at the pleasure of the general court, and it may, by special act, annul or dissolve any corporation which is subject to said provisions: Mass. 106,5.

This act may be altered or amended at the pleasure of the legislature, but not so as to divest or impair any right of property acquired under the same: Minn. 2673.

§ 9004. **Special Acts.** The act of incorporation of such company shall contain: 1. The names of the corporators. 2. The name of the corporation. 3. The location of the company. 4. The object of the company. 5. The capital stock, and how raised. 6. The duration of the charter. 7. A reference to this act by its title. 8. Such special exceptions to the provisions herein contained, or such additions thereto, as the general assembly may enact for the better carrying out the purposes of the company: S.C. 1885,105,1.

### **Art. 901. Organization under General Law.**

§ 9010. **Manner.** Any such number of persons as is hereinafter provided, who associate themselves together by such an agreement in writing as is hereinafter described, with the intention of forming a corporation for any purpose hereinafter specified, upon complying with the provisions of section twenty-one, shall be and remain a corporation: Mass. 106,6.

So, three or more persons may associate themselves together by written articles of agreement for the purpose of forming a corporation: Mass. 106,14; Me. 48,16; N.Y. 1892,691,2; Pa. Trading Cos. 1; Ind. 3851; Mich. 4161a; Minn. 2638, 2650, 2672; Mo. 2768.

Two or more: Ala. 1557.

Any number: Neb. 1,16,37.

Such articles must be signed, acknowledged, and recorded (1) in the county clerk's or register's office: N.Y.; Ind.; Mich. 4161a,8; Minn.<sup>c</sup> 2675; Mo. 2769; 1891, p. 77.

(2) With the secretary of state: N.Y.; Ind.; Mich. 4161a,1; Minn.<sup>c</sup>; Neb.; Mo.

(3) With the judge of probate: Ala. 1558.

NOTES. — See § 9000.

§ 9011. **Purposes.** "Any lawful business:" Me. 48,16; N.Y. 1892,691,2.

For the purpose of carrying on any mechanical, mining, or manufacturing business: Mass. 106,7; Me.; Pa.; Ind. 3851; Minn. 2638; Tenn. 1851; Mo. 2771; Dak. Civ. C. 511; Ala. 1557; except that of distilling or manufacturing intoxicating liquors (Mass., Pa.), three or more persons may associate themselves, with a capital of not less than five thousand nor more than one million dollars: Mass.

So, quarrying: Me., Minn., Ala.

Smelting: Mo.

Chemical business: Ind., Minn., Mo.

Printing: Mo.

Agricultural business: Minn.

Coal oil or petroleum: Mo.

Horticultural business: Mo.

Mercantile: Minn.

Transportation : Minn.

For furnishing motive power to carry on any such business : Ind.

For any manufacturing or mercantile business : Mich. 4161a ; Minn.

Manufacturing only : Neb. 1,16,37.

Including the renting of safes in burglar- or fire-proof vaults : Me.

Telegraph and telephone companies : Me.

For the purpose of carrying on any lawful business ("not mentioned in the seven preceding sections," Mass.) : Mass., Me., Minn. ; *except* buying and selling real estate (Mass.), banking and insurance (Mass., Me.), and any other business the formation of corporations for which is otherwise regulated by these statutes : Mass. 106,14.

"The construction and operation of railroads:" Me.

Or aiding in the construction thereof : Me.

Savings banks : Me.

Trust companies : Me.

Corporations intended to derive profit from the loan or use of money : Me.

Safe deposit companies : Me.

"For the purpose of co-operation in carrying on any business authorized in the two preceding sections, and of co-operative trade, seven or more persons may associate themselves, with a capital of not less than one thousand nor more than one hundred thousand dollars : " Mass. 106,9.

For the purpose of cutting, storing, and selling ice, or of carrying on any agricultural, horticultural, or quarrying business, or of printing and publishing newspapers, periodicals, books, or engravings, three or more persons may associate themselves, with a capital of not less than five thousand nor more than five hundred thousand dollars : Mass. 106,8.

For the purpose of examining and guaranteeing titles to real estate, any ten or more, with a capital of from two hundred thousand to one million dollars : Mass. 1884,180. See Title IV.

For the purpose of erecting and maintaining a hotel, public hall, or building for manufacturing or mechanical purposes, three or more persons may associate themselves, with a capital of not less than five thousand nor more than five hundred thousand dollars, but with no power to engage in the business of keeping a hotel : Mass. 106,13 ; 1888,116.

Of purchasing and holding real estate and buildings, and selling, leasing, and improving the same : Minn.

For the purpose of transacting the business of a common carrier of persons or property (Mass., Me.), three or more persons may associate themselves, with a capital of not less than five thousand nor more than one million dollars, with power to undertake for the carriage of persons or property beyond the limits of this commonwealth, but not to purchase or operate railroads, canals, or ferries : Mass. 106,112.

"Upon the high seas, or from ports in this state to ports without, or foreign ports, upon any waters : " Me.

For the purpose of making and selling gas for light, or heating, cooking, chemical, and manufacturing purposes (Mass., Minn.), or for the purpose of generating and furnishing steam or hot water for heating, cooking, and mechanical power in any city or town (Mass.), or for either or both of said purposes, ten or more persons may associate themselves, with a capital of not less than five thousand nor more than five hundred thousand dollars : Mass. 106,11 ; 1885,240 ; Minn. 2638.

Gas companies have power to construct and furnish electric lighting, and consolidate with such companies : Vt. 1888,123.

For the purpose of opening outlets, canals, or ditches for the introduction and propagation of herrings and alewives, three or more persons may associate themselves, with a capital of not less than one thousand nor more than five thousand dollars : Mass. 106,10.

For the manufacture of iron or steel, or both, or any other metal, or of any article of commerce from wood or metal, or both : Pa. Iron. Mfg. Cos. 1.

To supply any city or village with water : Ind.

For the purpose of carrying on the business of constructing, maintaining, and using stationary and floating elevators, or warehouses : Ind.

To form union stockyard and transit companies : Ind.

Companies for the purpose of buying and selling dry goods, carpets, boots and shoes, millinery or fancy goods, jewelry, and their manufacture : Ind.

Any kind of manufacturing or mechanical business not incompatible with an honest purpose : Minn. 2650.

For constructing, leasing, or operating docks, warehouses, public halls, elevators, or hotels, saving fund, loan or building association, lumbering : Minn. 2638.

Any number of persons, not less than three, desiring to form a corporation for the purpose of mining, smelting, reducing, refining, or working ores or minerals, or for working coal mines or stone quarries, and marketing the material, or for manufacturing brick or stone, or iron, steel, copper, or other metals, or for the purpose of buying, working, selling, and dealing in mineral or other lands, or for the whole or any part of said purposes : Minn. 2672.

To encourage and promote agriculture and the improvement of stock, and for these purposes may establish fair grounds ; to construct toll bridges ; to erect hotels, halls, market-houses, warehouses, exchange, and other buildings, and for the purpose of purchasing, owning, and renting buildings already erected ; to build wharves, docks, grain elevators, levees, and to construct canals and embankments for the reclaiming of lands ; to convey and transport persons and freights on land or water by any mode of conveyance whatever : to construct and operate horse railroads ; to purchase and use fire engines, hose, hooks and ladders, and all other apparatus necessary or useful to prevent or extinguish fires ; to supply any town, city, district, neighborhood, or village with gas or water ; to establish steam or other ferries ; for any other purpose intended for pecuniary profit or gain not otherwise especially provided for, and not inconsistent with the constitution and laws of this state : Mo. 2771.

§ 9012. **Articles of Association.** Such agreement shall set forth the fact that the subscribers thereto associate themselves together with the intention of forming a corporation : Mass. 106,16 ; Ind. 3851 ; Minn.<sup>c</sup> 2674 ; Tenn. 1852.

The corporate name assumed : Mass. ; N.Y. 1892,691,2 ; Ind. ; Mich. 4161a1 ; Minn.<sup>c</sup> ; Neb. 116,37 ; Tenn. ; Mo. 2768 ; Ala. 1558.

The period of its existence : N.Y., Ind., Mo.

Not to exceed fifty years : N.Y., Ind., Mo.

Thirty years : Minn. 2640,2653. Twenty years : Dak. Civ. C. 511.

The purpose for which it is formed : Mass. ; N.Y. ; Ind. ; Mich. ; Minn.<sup>bc</sup> 2651 ; Tenn. ; Mo. ; Ala.

The number and names of directors, etc., for the first year : N.Y., Ind., Mo.

Not less than five or more than thirteen : N.Y.

Three to thirteen : Mo. 2772.

And their residence or address : N.Y.

The town or city, which shall be in this commonwealth, in which it is established or located : and the amount of its capital stock : Mass. 106,16 ; N.Y. ; Ind. ; Mich. ; Minn.<sup>c</sup> ; Neb. ; Mo. ; Ala.

And the par value and number of its shares : Mass. 106,16 ; N.Y. : Minn.<sup>bc</sup> 2654 ; Neb. ; Mo. ; Ala.

The names and residence of incorporators : Minn.<sup>c</sup> Mo., Ala.

The post-office addresses of the subscribers, and a statement of the number of shares of stock which each agrees to take in the corporation : N.Y.

"The certificate may contain any other provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, and upon the powers of its directors and stockholders, which does not exempt them from any obligation or from the performance of any duty imposed by law." N.Y. 1892, 691,2,9.

Before any corporation formed and established by virtue of the provisions of this act shall commence business, the president and directors thereof shall cause their articles of association to be published at full length in two newspapers published in the county in which such corporation is located, or at the capital of the state; and shall also make a certificate of the purpose for which such corporation is formed, the amount of its capital stock, the amount actually paid in, and the names of its stockholders, and the number of shares by each respectively owned, which certificate shall be signed by the president and a majority of the directors, and deposited with the secretary of this state, and a duplicate thereof with the register of deeds of the county in which said corporation is to transact its business; and said secretary and said register of deeds shall respectively record the same in books to be kept by them for that purpose; and within thirty days after the payment of any instalment called for by the directors of such corporation a certificate thereof shall be made, signed, deposited, and recorded as aforesaid. A copy of the certificate first specified in this section, certified by the secretary of this state, under the seal thereof, shall be received in all the courts in this state as *prima facie* evidence of the due formation, existence, and capacity of such corporation, in any suit brought by or against the same: Minn.<sup>b</sup> 2652.

But it may be renewed from time to time for a period not longer than thirty years: provided that three fourths of the votes cast at any regular meetings of the stockholders for the purpose are in favor of such renewal, and those desiring a renewal purchase the stock of those opposed thereto at its current value: Minn.<sup>b</sup> 2653.

The general powers, etc. of said corporation are as contained in sections 1704-5. (See §§ 8200-8205.) It shall also have power to raise, buy, sell, and deal in agricultural products, operate flouring and other mills, and deal in merchandise: Tenn. 1853.

NOTES. — For explanation, see § 9000.

**§ 9013. The Capital Stock** may be not less than one thousand nor more than ten million dollars: Mass. 106,14; Me. 48,17; 1891,99.

Two thousand to ten million dollars: Mo. 2772.

Not more than five million dollars: Pa. Mfg. Cos. 1; Mich. 4161a1.

Not less than five thousand dollars: Mich.

Than ten thousand dollars: Minn.<sup>b,c</sup> 2642,2676.

It shall be fixed within the limits of the charter: Me. 48,4.

And be divided into shares: Me., Minn.

Not less than five dollars nor over one hundred dollars apiece: N.Y.

From two dollars to one hundred dollars: Minn.<sup>a</sup>

Fifty to one hundred dollars: Minn.<sup>b</sup> 2654.

One hundred dollars: Minn.<sup>c</sup>

A manufacturing corporation may by three-fourths vote of all its stock, at a special meeting, issue "special stock" to an extent not over two fifths its actual capital, subject to redemption at par after a certain time, and entitled to a fixed dividend not over four per cent, and its holders are not liable for corporate debts beyond their stock: Mass. 106,12; Pa. Mfg. Cos. 1.

When special stock is created, the general stockholders are liable for all debts and contracts until it is fully redeemed: Pa. Mfg. Cos. 10.

Any corporate name may be assumed which indicates that it is a corporation, and which is not in use by an existing corporation or company (and the name assumed

shall be changed only by act of the general court, Mass.): Mass. 106,17; Pa.; Minn.<sup>a,c</sup> 2638; Mo.

If organized for the purposes mentioned in sections nine or ten, the words "co-operative," or "fishing," respectively, shall form part of the name: Mass. 106,17.

No two companies shall assume the same name, nor a name so similar as to be liable to mislead: Mich. 4161a; Mo.

At such first meeting, including any necessary or reasonable adjournment, an organization shall be effected (1) by the choice by ballot of a temporary clerk, who shall be sworn, and by the adoption of by-laws, and the election, in the manner provided below, of directors, treasurer, clerk, and such other officers as the by-laws may provide; but at such first meeting no person shall be eligible as a director who has not subscribed the agreement of association. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification: Mass. 106,20.

(2) By adopting a corporate name, defining the purposes of the corporation, fixing the amount of the capital stock, dividing it into shares, and electing a president, not less than three directors, a clerk, treasurer, and any other necessary officers, and adopting a code of by-laws: Me. 48,17.

The amount of the capital stock of every corporation established subject to this chapter by special charter, and not organized, shall be fixed and limited by the corporation, and shall at its first meeting be divided into shares, of which a record shall be made by the clerk: Mass. 106,32.

The par value of shares in the capital stock of any corporation organized for the purposes mentioned in sections nine and ten (see § 9011) may be one hundred dollars, or any sum fixed in its articles of association, and any such corporation, at a meeting of its stockholders called for the purpose, may change the par value of its shares: provided that a certificate of such change shall within ten days thereafter be made, signed, and sworn to by its president, treasurer, and a majority of its directors, and be filed in the office of the secretary of the commonwealth: Mass. 106,31.

NOTES. — For explanation, see § 9000.

**§ 9014. Certificate.** The president, treasurer (and clerk, R.I.), and a majority of the directors, shall forthwith<sup>a</sup> make, sign, and swear to a certificate setting forth (1) a true copy of the agreement of association, with the name of the subscribers thereto, the date of the first meeting, and the successive adjournments thereof, if any, and shall submit such certificate and also the records of the corporation to the commissioner of corporations, who shall examine the same, and who may require such other evidence as to the facts of the case as he may judge necessary. The commissioner, if it appears that the requirements of the preceding sections preliminary to the establishment of the corporation have been complied with, shall certify that fact and his approval of the certificate by indorsement thereon. Such certificate shall thereupon be filed by said officers in the office of the secretary of the commonwealth, who, upon payment of the fee hereinafter provided, shall cause the same with the indorsement thereon to be recorded, and shall thereupon issue a certificate: Mass. 106,21.

(2) The name and purposes of the corporation, the amount of its stock, the amount already paid in, the par value of its shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors: Me. 48,18; 1891,99.

(3) The amount of the capital stock: R.I. 155,2.

The certificate is recorded within ten days with the town clerk: R.I.

Like proceedings are had in case of increase of stock: R.I.

When the certificate shall have been filed as aforesaid, the persons who shall

have signed and acknowledged the same, and their successors, shall be a body politic and corporate: Ind. 3852; Mich. 4161a; Minn.<sup>b,c</sup> 2650,2675; Mo. 2770.

So, such certificate shall have the force and effect of a special charter, and shall be conclusive evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate: Mass. 106,21.

Such certificate must be examined by the attorney-general, and by him certified to be properly drawn, and signed, and conformable to law: Me.

It is [also] recorded in the county registry of deeds where the business is to be done, in a book kept for the purpose: Me.

And a certified copy of the record filed with the secretary of state: Me.

Who enters the date of such filing on the original certificate kept by the corporation: Me.

From the time of filing or record with the secretary of state the signers of the articles, etc. are a corporation: Me. 48,19.

"The same as if incorporated by a special act:" Me.

So the secretary of state's certificate: Mo. 2770.

Upon the filing of such papers the judge of probate must issue to the subscribers, their associates, and their successors, a certificate stating that they are duly organized as a corporation under the name and style and for the purposes expressed in the declaration, having the power, capacity, and authority conferred by law: Ala. 1561.

NOTES. —<sup>a</sup> Within ten days after the payment of the last instalment of the capital stock: R.I.  
<sup>b,c</sup> See § 9000.

§ 9015. The first meeting shall be called by a notice signed by one or more "of the subscribers to such agreement, stating the time, place, and purpose of the meeting, a copy of which notice shall, (1) seven days at least before the day appointed for the meeting, be given to each subscriber, or left at his usual place of business or place of residence, or deposited in the post-office, postpaid, and addressed to him at his usual place of business or of residence. And whoever gives such notices shall make affidavit of his doings, which shall be recorded in the records of the corporation: Mass. 106,18.

(2) Fourteen days before be served, or published in some paper in the county: Me. 48,3 & 17; 1891,99.

(3) Two weeks' publication is required: Mich. 4161a2; Minn.<sup>b</sup> 2665.

It may be called without notice, if all the stockholders sign a written waiver: Mich.

Fifty per cent of the capital stock having been subscribed in good faith by subscribers of whose solvency the commissioners are satisfied, they shall call the subscribers together, at such time and place as they may appoint, for the election of a board of directors and other officers, and the further organization of the proposed corporation: Ala. 1561.

The proceedings of the meeting of the subscribers must be reduced to writing, and must be signed by them, and delivered to the commissioners, who must return and file the same in the office of the judge of probate; and the officer or person to whom the subscriptions for stock have been delivered must make a copy thereof, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received payment in cash of twenty per cent, and from which he has received contracts in writing, as hereinbefore specified: Ala. 1561.

NOTES. —<sup>a</sup> By any two: Mich., Minn. <sup>b</sup> See § 9000.

§ 9016. **Subscription to Stock.** The names of owners, and the number of shares owned by each, shall be entered of record at the first meeting : Me. 48,4.

A majority of the stock of any such corporation may be held by persons who are not citizens of this state or of the United States : Pa. Iron Mfg. Cos. 7.

No such corporation shall engage in the transaction or management of the business which it is incorporated to conduct until one half of its capital stock shall have been subscribed, nor until it shall have filed in the offices where its certificate of incorporation was filed a further certificate, executed and acknowledged by the president or vice-president, and treasurer or secretary, to the effect that one half of the capital stock of the corporation has been in good faith subscribed, and verified by them to the effect that the statements contained in it are true : N.Y. 1892,691,3.

On the filing of the declaration the judge of probate must issue to two or more of the subscribers a commission authorizing them as commissioners to open books of subscription to the capital stock of the proposed corporation, at such time and place, and upon such notice, as they may appoint : Ala. 1559.

§ 9017. **The Promoters.** Until the organization is completed, the subscribers to the agreement of association shall hold the franchise ; and if it is not otherwise provided in such agreement, each subscriber may take an equal number of the shares in the capital stock upon paying the assessments thereon as called for by the corporation, if he elects to take such shares at the first meeting. All shares not so taken shall be disposed of as the corporation determines : Mass. 106,19.

Until otherwise provided, the persons executing such articles of incorporation shall constitute a board of directors, with full power and authority to make by-laws and manage the affairs and business of such corporation : Minn. 2678.

§ 9018. **Changes.** A manufacturing corporation may (1) remove its business to any other place in the state : Mass. 105,7 ; N.Y. 1890,567,9 ; Mich. 4161b7.

(2) Extend its term of incorporation, not to exceed fifty years in all : Ind. 1891,167.

And purchase and hold real or personal property therein : Mass.

(3) Increase its stock : Ind.

By two-thirds vote of all the stock at a meeting called therefor : N.Y., Mich.

By majority vote at an annual meeting : Ind.

Any corporation organized under the provisions of this chapter, or of chapter two hundred and twenty-four of the statutes of the year eighteen hundred and seventy, or of any statute in amendment thereof or in addition thereto, may, upon the vote of all its stockholders at a meeting duly called for the purpose, alter, add to, or change the business for the transaction of which it was incorporated, but shall not engage in any business which is not authorized by the provisions of this chapter : Mass. 106,51.

Corporations organized or chartered for the manufacture of cotton or woollen goods may, upon the consent of four fifths of the stockholders, by a vote at a meeting called for the purpose, carry on the manufacture of silk, linen, flax, or india-rubber goods : Mass. 106,53.

If the stockholders of any corporation organized under sections sixteen and seventeen find that the amount of its capital stock is insufficient for the purposes for which said corporation is organized, or that the number of directors is inconvenient for the transaction of its business, the stockholders may, by a vote representing a majority of the stock issued, increase the amount of its capital stock to any amount not exceeding ten million dollars, and may change the number of their directors in like manner, and the corporation shall file a certificate thereof with the secretary of state within ten days thereafter, and thereupon said vote shall take effect : Me. 1891,99,20.



A company incorporated for manufacturing purposes may, upon a vote of the holders of a majority of its stock, extend its manufacturing operations to articles in the same line of business that are not authorized by the terms of the original articles of incorporation; and after making a certificate of such vote, and specifying therein how far the manufacturing operations are to be extended, verified by the oath of its president, and filing the same in the office of the secretary of state, such company may manufacture and sell such articles as shall be named or otherwise provided for in such certificate: O. 3856.

Any company incorporated for manufacturing iron may, upon a vote of the holders of a majority of its stock, engage in and carry on the business of manufacturing steel in its various branches: O. 3857.

Whenever all the stockholders of any such company shall execute and acknowledge, before some officer authorized to take acknowledgments of deeds, a certificate, in writing, showing the consent of such stockholders to an extension and enlargement of the objects of such company beyond those expressed in the original certificate of incorporation, and shall file and have the same recorded, as provided, such company shall thereafter have full power and authority to carry on their operations and pursue their objects to the extent expressed and allowed in the certificate showing such enlargement and extension; and such corporation may take, hold, and convey real estate proper for carrying on the proposed business thereof. Ind. 3870.

Every corporation organized or existing under the provisions of this act may at any annual meeting, or any meeting duly called for that purpose, by a resolution adopted by a vote of (1) two thirds in interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act; but such amendment shall not become operative until a copy of such resolution, signed by the president and secretary of the corporation, shall have been recorded as is provided herein for the recording of original articles: Mich. 4161b6.

(2) So, by a majority vote in number and amount: Minn.<sup>a</sup> 2647,2648.

(3) By a majority of the shares: Minn.<sup>b,c</sup> 2651,2675.

And it must be published: Minn.<sup>b</sup> 2651.

Any corporation formed under this article for manufacturing purposes may change or extend its business to any other manufacturing business, subject to the provisions and liabilities in this article prescribed with reference to such corporations; and it shall take such steps and proceed in all respects as provided in reference to the increase or diminution of the capital stock of corporations; and if the assent of two thirds of all the holders of shares of stock in the said corporation shall be obtained to the said proposed change, in the manner set forth, then upon the making out and recording, in the manner therein directed, of a certificate, the business which said corporation may carry on thenceforth shall be that to which it has been thus changed or enlarged: Md. 23,143.

The stockholders may, by resolution, three fourths of the entire stock being cast in the affirmative, change, direct, and appoint the time and place at which all subsequent meetings of the directors shall be held: Tenn. 1863.

Upon the issuance of stock, the lawful holders thereof shall constitute the members of such corporation, and a majority in amount thereof may call a meeting of the stockholders at any time, irrespective of any by-laws, at the principal office of the company, or at the capital of the state, upon giving thirty days' notice by publication in a newspaper published at the place of such office, if there be such paper, and if not, then in a paper published at the capital: Minn. 2677.

The number of directors may be changed by a majority vote of the stock at any meeting: Me. 48,20.

The directors of any manufacturing corporation desiring to extend its business, within one year of the date of the original certificate, to other business of the

same general character, may do so by filing a certificate of three-fourths vote of the stock: N.Y. 1892,691,7.

NOTES. — For explanation, see § 9000.

## **Art. 902. Organization.**

### **§ 9020. Office.** (See § 8040.)

It may have an office at any place without the state at which the by-laws of the corporation may authorize the same meetings of stockholders and directors to be held, and any business of the corporation transacted; but it shall also keep an office within the state (in the county in which its principal business in this state is transacted, Pa., Mich.), and an officer of the company there, upon whom service of process may be made: Pa. Iron Mfg. Cos. 7; Mich. 4161b9; Minn. 2646,2681.

The property and stock of such corporation shall be at all times liable to taxation under the laws of this commonwealth: Pa.

A secretary and treasurer shall reside, and have their place of business, and keep the books of said corporation, within the state: Mich. 4161a5; Minn.<sup>b</sup> 2662.

The place holding such offices [*sic*] shall be fixed by a vote of a majority of stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors of such corporation to the secretary of state of this state within two months from the time such office or offices were so located: Mich. 4161b9.

Every manufacturing company shall establish and keep, at some place within one of the counties in which its business is carried on, a principal office, at which shall be kept accurate accounts exhibiting the financial condition of the corporation, and of its capital stock or shares, and of all its property of every description, and credits, subject to taxation, which accounts shall at all times be subject to the inspection of any assessor lawfully authorized to assess such property and credits; notice of the place where such office is established, and of any change thereof, shall be published in some newspaper of general circulation in such county; and the principal accounting officer of such company shall be a resident of this state: O. 3855.

**§ 9021. Officers.** (See § 8043.) The business of every corporation which is subject to this chapter shall be managed and conducted by a president, board of directors, clerk, treasurer, and such other officer and agents as the corporation authorizes for that purpose: Mass. 106,123; Me. 48,1; Minn.<sup>b</sup> 2659,2662.

But no conveyance or mortgage of its real estate, or lease thereof for more than one year, shall be made, unless authorized by a vote of the stockholders at a meeting called for the purpose: Mass. 106,23.

The number of the directors shall not be less than three: Mass. 106,25; Me. 48,2; Ind. 3854; Mich.; Minn.<sup>b</sup>; Mo. 2772; Ala. 1561.

One of them shall be chosen president by the directors: Mass.; Me.; Ind. 3854; Mich. 4161a5; Minn.<sup>b</sup>; Neb. 1,16,38.

Nor more than thirteen: N.Y., Mo. Eleven. Ind. Nine: Mich., Ala.

And one of them vice-president: Mich.

So the secretary and treasurer (who may be the same person, Ind., Mich.) are elected by the directors: Ind. 3855; Mich.; Minn.<sup>b</sup>

The directors (clerk and treasurer, except in Minn. and Neb.) shall be chosen annually by the stockholders by ballot, and shall hold their offices for one year and until others are chosen and qualified in their stead: Mass. 106,24; Me. 48,2; Ind. 3854; Mich. 4161a3; Minn.<sup>b</sup>; Neb. 1,16,38; Ala. 1570.

The manner of the choice or appointment of all other agents and officers, and the manner of filling all vacancies, shall be prescribed by the by-laws: Mass. 106,24; Mich. 4161a5.

No director can hold office who is not a stockholder at the time of his election: Me. 48,2; N.Y. 1892,691,2; Ind.; Minn.<sup>b</sup>; Mich.; Neb.; Mo.

Of at least five shares: N.Y.

Nor who ceases to be thereafter: Me.; Neb.

The directors are elected by ballot by the shareholders in such corporation. Any corporation may elect its directors for one or more years, not to exceed three years, the time of service and mode of classification to be provided for by the by-laws of the corporation: provided, however, that there shall be an annual election for such number or proportion of directors as may be found upon dividing the entire number of directors by the number of years composing a term: Mo. 2772.

The treasurer of every manufacturing or mining company now incorporated or hereafter incorporated under any special or general law of this commonwealth shall keep the moneys of the corporation in a separate bank account: Pa. Mfg. Co. 15.

The clerk shall be sworn, and shall record all votes in a book to be kept for that purpose (and shall perform such other duties as shall be assigned to him: Mass.): Mass. 106,26; Me. 48,2.

The treasurer shall give bond for the faithful discharge of his duty in such sum and with such sureties as shall be required by the by-laws: Mass. 106,26; Me. 48,2; Ind. 3855.

So the secretary: Ind.

And both are sworn: Ind.

A majority of its directors may be citizens of another state, or of any foreign country: Pa. Iron. Mfg. Cos. 7.

They must all be residents of the United States: Ind.

One must be resident in the state: Mo.

It shall not be necessary for more than one of the directors of any cotton, woollen, chemical, or other manufacturing company, organized under any law of this state, to be an actual inhabitant and resident of this state: *provided* that every such company having only one of its directors an actual inhabitant and resident of this state shall, in addition to the matters required, also at the same time and manner therein provided designate and file in the office of the secretary of state of this state the name and place of abode of such resident director: N.J. Suppl. Corps. 62.

The management of the property and business of the corporation is under the control of the directors, who have power to elect and appoint all officers, agents, and servants, removing them at pleasure, fixing their compensation, and prescribing their duties, and to exercise such other powers as may be delegated to them by the by-laws of the adoption of the stockholders: Ala. 1570.

The directors of such corporation shall have power to fill any vacancy which may happen in their board by death, resignation, or otherwise, for the current year: Mich. 4161a6; Minn.<sup>b</sup> 2661; Mo. 2772; Ala.

A majority of the directors of every manufacturing or mercantile corporation convened according to the by-laws shall constitute a quorum for the transaction of business: Mich. 4161a9; Minn.<sup>b</sup> 2666.

NOTES. — <sup>a</sup> See § 9000.

**§ 9022. Meetings.** (And see § 8050.) The time and place of such election shall be prescribed by the by-laws of such corporation: Mo. 2772; Ala. 1571.

Of which time and place at least two weeks' notice shall be published in some newspaper printed at least once a week in the city or county in which the corporation is located: Mo.

Subsequent meetings of any such corporation may be called in such manner as its by-laws shall prescribe: provided that if the by-laws of any such corporation do not prescribe the manner of calling meetings thereof, its directors may call such meetings by giving the notice provided in this section for the first meeting: Minn. 2665.

The stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote. Stockholders may appear and vote in person, or by proxy duly filed: Mich. 4161a9; Minn.<sup>b</sup> 2666; Ala. 1561.

Absent stockholders may vote by proxy (as prescribed by by-laws, S.C.), and each share of stock shall entitle the owner thereof to one vote: Ind. 3855; Mo. 2772; S.C. 1885,105,6.

At all meetings, absent stockholders may vote by proxy, authorized by a writing executed and dated within six months previous to the meeting at which it is used, if the maker thereof resides in the United States: Mass. 106,27; 1888,188.

Any stockholder voting shall cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of directors or managers to be elected at such election, and each shareholder may cast the whole number of his or her votes, either in person or by proxy, for one candidate, or may distribute such votes among two or more candidates; and the person having the greatest number of votes shall be declared elected: Mo. 2772. See § 8054.

If an election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time thereafter, to be fixed upon and notice thereof to be given by the directors: Mich. 4161a4; Minn.<sup>b</sup> 2660; Neb. 1,16,38.

Provided that, in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors, by giving the notice as prescribed in section three of this act: Mich.

In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the said laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected: Mo. 2772.

**§ 9023. By-laws.** (See also Art. 807.) Every such corporation may determine by its by-laws what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum. If the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum: Mass. 106,28.

By-laws may be made as in Title I. (§ 8070): Me. 48,3.

Not inconsistent with the laws of the state or the United States: S.C. 1885,105,2.

May make all needful by-laws, rules, and regulations for the transaction of its business, the management and control of its affairs, and the uses and disposition of its property; and for the transfer of its stock, and for the creation and preservation of a lien upon the shares of its stockholders for the payment of any debt or liability they may incur to the corporation: Ala. 1562.

The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this state, and prescribing the duties of officers, artificers, and servants that may be employed: for the appointment

of all officers, and for carrying on all kinds of business within the objects and purposes of such company : Neb. 1,16,38.

A majority of the directors shall be a quorum : Ind. 3854.

The by-laws of the corporation shall be adopted at a meeting of the stockholders who have subscribed in the aggregate to at least one half of the capital stock of the corporation, and paid ten per cent of such subscription in cash, which meeting shall be called by the directors named in the certificate by serving, at least five days before the meeting, upon every stockholder personally, or by depositing in the post-office a copy addressed to him at his last known place of residence, postage paid, a written notice stating the time, place, and object of the meeting.

Such by-laws shall provide : —

1. The term of the office of the directors, which shall not exceed one year ;
2. The manner of filling vacancies among directors and officers ;
3. The time and place of the annual meeting ;
4. The manner of calling and holding special meetings of the stockholders ;
5. The number of stockholders who shall attend, either in person or by proxy, in order to constitute a quorum ;
6. The officers of the corporation, always including a president, a secretary, and a treasurer, the manner of their election by and among the directors, and their powers and duties ;
7. The manner of electing or appointing inspectors of election ;
8. The manner of amending the by-laws.

Such corporation may prescribe and adopt by-laws for the management of its business and affairs by a board of directors, trustees, committee, or other officers or agents, and provide for their election or appointments, and prescribe their duties, and may require bond from any officer for the faithful discharge of duties, and may by such by-laws prescribe in respect to all matters appertaining to the business and affairs of said corporation, not inconsistent with the provisions of this act nor the constitution or laws of this state : Minn. 2678.

Such by-laws may be made, altered, or amended by the directors, trustees, or committee clothed with the general management of the affairs of such corporation ; but the stockholders, at any regular meeting, may repeal or alter any by-law, or adopt new ones, and such action shall remain binding until repealed or changed by the stockholders themselves at some regular meeting : Minn. 2678.

A copy of all by-laws, duly certified, and all amendments and alterations of the same, shall be filed for record with the register of deeds where said articles of incorporation are recorded, and also with the secretary of state, and shall not become operative or valid until so filed : Minn. 2678.

**§ 9024. Annual Return.** (And see § 8080.) Every manufacturing company must make an annual report signed by a majority of the directors : Mass. 106,54 ; R.I. 155,11 ; Pa. Mfg. Cos. 8 ; Ind. 3863 ; Mich. 4161b1.

By its president : Mass., N.Y., Pa., Ind., Tenn.

Treasurer : Mass., Pa.

Secretary : Ind., Mich.

And sworn to : N.Y., Pa., Ind.

It is filed with the town clerk before February 15 : R.I. With the secretary of state : Mass., Mich. The auditor : Pa. Iron Mfg. Cos. 3. With the clerk of the county : N.Y., Mich. The recorder of deeds : Pa. Mfg. Cos. 8.

Such report is published in a paper near the place of business : N.Y., Ind. It is published in a newspaper in the county : Tenn. 1855.

Within thirty days after its annual meeting : Mass. Before January 20 : N.Y. In January : Mich., Tenn. In September : Pa.

Containing (1) the amount of capital stock actually paid in, the value as last assessed for a town tax of its real estate, the value of its personal assets, and the amount of its debts and liabilities on December 31st preceding : R.I. 155,11. (2) The amount of its capital stock fixed, Mass., N.Y., Ind., Mich., Tenn. ; paid in, Mass., N.Y., Pa., Mich. ; the names and holdings of the stockholders, Mass., Pa., Mich., Tenn. ; the assets and liabilities of the corporation, Mass., Pa., Mich. ; its "operations," Pa. ; in such form and with such detail as the commissioner, etc. requires, Mass., Pa., Mich. ; the existing debts, N.Y., Ind., Tenn. ; its holding in real and personal estate, Pa., Mich. ; the amount of assessments made and paid in, Ind.

For failure to report, all stockholders are jointly and severally liable for debts then existing and thereafter, to the amount of their shares paid up to the par value, unless such company have assigned in insolvency : R.I. 155,12. See also § 9026.

A stockholder may exempt himself from such liability by filing the certificate (report) himself, or a statement that the directors have refused so to do, which latter must also be published in a Providence newspaper : R.I. 155,14.

For failure so to report, the directors are liable to a penalty : Mich.

When a corporation fails for two successive years to make such annual statement, the commissioner may apply to the supreme judicial court for a dissolution of such corporation, and the court, after due notice to all parties interested and a hearing, may for reasonable cause decree a dissolution of the corporation : Mass. 106,55.

Every such corporation, carrying on its manufacturing or mercantile business outside this state, shall annually, in the month of January, make a report, which shall be signed by a majority of the directors, and verified by the oath of the secretary of the corporation, and contain all the facts required to be stated by corporations doing business within this state : Mich. 4161b1.

Every such company for manufacturing or mining, whether incorporated by the general assembly or a court, shall exhibit its books, and a statement of its property and condition, to such agent or agents as the general assembly may from time to time appoint to examine the same : Va. 1142.

§ 9025. **Reports to Stockholders.** (And see § 8081.) The president and directors of every such corporation shall annually lay before the stockholders a full and complete statement of the business and affairs of the corporation for the preceding year : Pa. Iron Mfg. Cos. 3 ; Mich. 4161b4 ; Minn.<sup>b</sup> 2669.

So, "when required : " Neb. 1,16,38.

They shall also, when required, present to the stockholders reports in writing of the situation and amount of business of the corporation : Minn. 2644.

If the president, directors, or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal : Minn. 2671.

The president shall, in January, make an annual statement, showing the amount of the capital stock and the existing liabilities, and a list of the stockholders, which shall be attested by two or more of the directors, and be spread upon the minutes by the secretary : Tenn. 1869.

§ 9026. **Liabilities of Officers.** The officers of any corporation which is subject to this chapter shall be jointly and severally liable for its debts and contracts in the following cases, and not otherwise : Mass. 106,60 ; Pa. Trading Cos. 15.

First, the president and directors, for making or consenting to a dividend when the corporation is, or thereby is rendered, insolvent, (1) to the extent of such dividend: Mass. 106,60; Pa. Mfg. Cos. 5; Trading Cos. 2; Tenn. 1859; Mo. 2773. (2) For all debts due at the time of the dividend: Ind. 3867; Mich. 4161c1; Minn.<sup>b</sup> 2664.

Second, for debts contracted between the time of making or assenting to a loan to a stockholder and the time of its repayment, to the extent of such loan: Mass. 106,60; Miss. 1043.

Third, when the debts (exclusive of mortgage debts, S.C.) of a corporation exceed its capital (see § 9045), to the extent of such excess (existing at the time of the commencement of the suit against the corporation upon the judgment in which the suit in equity to enforce such liability is brought as hereinafter provided, Mass.): Mass. 106,60; R.I. 155,15; Pa. Mfg. Cos. 6; Tenn. 1858,1871; S.C. 1885,105,4; Miss. 1046. See also §§ 8219,9045.

Fourth, the president, directors, and other officers shall be so liable for signing any certificate required by law knowing it to be false; but only the officer or officers knowing thereof shall be liable: Mass. 106,60; R.I. 155,20; Pa. Trading Cos. 5. For failing to file certificate, as in § 9030 required: R.I. 155,3.

The president, directors, and treasurer shall be so liable for signing any statement filed under section forty-eight, when the property mentioned in such statement is not conveyed and taken at a fair valuation; but only the officer or officers signing the same shall be so liable: Mass. 106,60.

A director absent at the time of such *debt* may exempt himself from liability by giving notice to the stockholders at a meeting called for the purpose: R.I. 155,16; Pa.; S.C. 1885,105,5; or of *dividends*, by filing written statement with the clerk: Pa., Ind., Tenn., Mo.

Fifth, if any company organized and established under the authority of this act, and of the act to which this is supplementary, shall violate any of the provisions thereof, and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable, in an action founded on said acts, for all debts contracted after such violation as aforesaid: Ind. 3868; Mich. 4161c2; Minn.<sup>b</sup> 2663.

But to the extent only of three times the amount paid in on stock standing in such director's name: Mich.

If any certificate or report made or public notice given by the officers of any such company, as required by this act, shall be false in any material representation, or if they shall fail to give such notice or make such report, and any person or persons shall be misled or deceived by such false report or certificate, or on account of such failure to make such report, and damaged thereby, then all the officers who shall sign the same, knowing it to be false, or fail to give the notice or make reports as aforesaid, shall be jointly and severally liable for all damages resulting from such failure on their part while they are stockholders in such company: Ind. 3865.

The making of a false statement, to be printed as aforesaid, shall render all persons assenting thereto individually liable to all persons dealing or trading with said company upon the faith of said fraudulent statement: Tenn. 1857.

Any director or other officer or stockholder of said corporation who shall knowingly or wilfully make, or cause to be made, any fraudulent misrepresentation or misrepresentations as to either the capital, property, or resources of said corporation, shall be held guilty of a misdemeanor: S.C. 1885,105,8.

No officer or director of a manufacturing company may borrow its funds or use the same without a majority vote of directors, giving collateral or security, and paying interest: Ct. 1889,196.

§ 9027. **The books** of every such corporation containing their accounts shall be kept, and shall at all reasonable times be open, in the city, village, or town, where such corporation is located, or at the office of the treasurer of such corporation, within this state, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation, and shall have the right to examine the same : Mich. 4161b4 ; Minn.<sup>b</sup> 2669 ; Neb. 1,16,38.

Such corporation shall keep a record of all proceedings had at meetings of stockholders, and also of all proceedings had or taken by the board of directors, trustees, or committee having charge of its affairs, and such record shall be subject to the inspection of all stockholders at all reasonable times : Minn. 2678.

The directors shall cause a record to be kept of all stock subscribed and transferred and of all business transactions ; their books and records shall at all times be open to the inspection of any and all stockholders : Minn. 2644.

The trustees or directors of the corporation shall keep correct accounts of their transactions, and have full statements of the condition of affairs of such corporation, and a list of the stockholders and the number of shares of stock owned by each made out, and a copy thereof delivered or sent by mail to each of the stockholders as often as once in each year, at least ten days before the day of election : Mo. 2774.

Each shareholder may at all proper times have access to the books of the company, to examine the same, and under such regulations as may be prescribed by the by-laws : Mo. 2774.

The books and all records of the proceedings of such corporation shall be kept open for the inspection of all persons interested : Mo. 2778.

§ 9028. **Of the Employees.** No such company shall permit to be withheld, or authorize or direct the withholding of wages due any of its operatives or employees, by reason of the sale or furnishing of goods, wares, or merchandise by any person to such operatives or employees, unless the same be withheld by reason of and in obedience to due process of law. But nothing herein contained shall prohibit any such company from supplying to its employees oil, powder, and other articles and implements necessary for or used in mining : Pa. Mfg. Co. 13.

### **Art. 903. Of the Capital Stock.**

§ 9030. **Must be paid in before Business.** No corporation which is subject to this chapter shall commence the transaction of the business for which it was organized or chartered until the whole amount of its capital stock has been paid in, and a certificate of that fact, and of the manner in which the same has been paid in, and at the time of making the certificate been invested or voted by the corporation to be invested, signed, and sworn to by the president, treasurer, and a majority at least of the directors, has been filed in the office of the secretary of the commonwealth : Mass. 106,46.

The capital stock, so fixed and limited, shall all be paid in, (1) one half thereof within one year, from the incorporation of said company, or such corporation shall be dissolved : N.Y. 1892,691,6.

(2) Within eighteen months, in such instalments as the by-laws direct : Ind. 3859.

Two dollars per share must be paid upon subscription : Va. 1144.

The directors may call in the subscription to the capital stock of such corporation by instalments, in such proportion and at such times and places as they shall think proper, by giving notice thereof as the by-laws shall prescribe : Mich. 4161b ; Minn.<sup>b</sup> 2655 ; Va. 1144.

Every corporation (the directors, Me.) which is subject to this chapter, from time to time (at a legal meeting called for the purpose, Mass.), may assess upon each share



such sums of money as it deems proper, not exceeding in the whole the par value thereof; and the sums so assessed shall be paid to the treasurer at such times and by such instalments as the corporation directs : Mass. 106,43 ; Me. 48,6.

Before commencing business, the president, treasurer, and a majority of the directors shall prepare a certificate setting forth the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and shall sign and make oath to it ; and after it has been examined by the attorney-general, and been by him certified to be properly drawn and signed, and to be conformable to the constitution and laws, it shall be recorded in the registry of deeds in the county where the business is to be done, in a book kept for that purpose, and a copy thereof certified by such register shall be filed in the secretary of state's office, who shall enter the date of filing thereon, and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose : Me. 1891,98,18.

The directors, within thirty days (N.Y.) after the payment of such (last) instalment of the capital stock, so fixed and limited by the company, shall make a certificate stating (1) the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees ; and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of the said company is carried on : Pa. Mfg. Cos. 3 ; Ind. 3861.

(2) That the same has been *bona fide* subscribed, and one half thereof actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors or managers : Mo. 2768.

(3) That one half has been paid up : N.Y.

NOTES. — See § 9000.

**§ 9031. Payment of.** No note or obligation given by any stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock : N.H. 149,9 ; Mass. 106,47 ; R.I. 155,7 ; Mo. 2775 ; Miss. 1043.

Nothing but money shall be considered as payment of any part of the capital stock : Tenn. 1856 ; Ala. 1560.

Or land at a fair valuation : Tenn.

Conveyance to the corporation of property, real or personal, at a fair valuation, shall be deemed a sufficient paying in of its capital stock to that extent, if a sworn statement, signed by its president, treasurer, and a majority of directors, describing it, and approved by the commissioner of corporations and indorsed by him, is filed with the secretary of state : Mass. 106,48.

Such statement is to be included in the certificate of payment of capital below required : Mass.

Any manufacturing company hereafter or heretofore incorporated may receive the assignment of any patent in payment of any stock subscribed to the amount of the value of said patent, as agreed on by the subscriber and the corporation : Tenn. 1872.

But the commissioners may receive subscriptions payable in money, the subscriber having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated necessary labor for the corporation, at the reasonable value of such services or labor ; or in property at the reasonable value thereof the corporation has capacity to acquire and hold, the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation : Ala. 1560.

Upon the delivery of the subscriptions to such officer or person, he shall require of

the subscribers whose subscriptions are payable in money, without the privilege of discharge in services, or labor, or property, the payment in cash of twenty per cent thereof; and of the subscribers whose subscriptions are payable in money with the privilege of discharging the same in stipulated service, or labor, or in the transfer or conveyance of property, contracts in writing signed by them, expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or the transfer or conveyance of the property, at such times as the board of directors may appoint: Ala. 1561.

§ 9032. **Forfeiture, etc.** If the proprietor of a share neglects to pay a sum duly assessed thereon for the space of thirty days<sup>a</sup> after the time appointed for payment, the treasurer of the corporation may sell by public auction a sufficient number of his shares to pay all assessments then due from him, with necessary and incidental charges: Mass. 106,44; Me. 48,6; Pa. Mfg. Cos. 2; Ind. 3860; Mich. 4161b; Minn.<sup>b</sup> 2655.

Or it may sue the delinquent stockholder: Mich., Minn.<sup>b</sup>

Giving notice of the time and place of such sale, and of the amount due on each share: Mass., Me., Pa.

In a paper printed in the town or county where the manufactory is established: Mass., Me., Pa. Ind., Mich., Minn.<sup>b</sup> Otherwise in the state paper (Me., Minn.<sup>b</sup>), or the paper of some adjoining county: Mass.

Three weeks successively: Mass., Me., Pa.

Thirty days: Mich., Minn.<sup>b</sup>

Or by posting: Ind.

And the treasurer's certificate of the sale of such shares, recorded as other transfers, passes title to the purchaser: Mass. 106,45; Me. 48,7; Pa. Mfg. Cos. 2; Ind. 3860; Minn.<sup>b</sup> 2655.

In case the proceeds of such sale shall be insufficient to pay said instalment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased: Mich. 4161b; Minn.<sup>b</sup> 2655.

When a stockholder has transferred or assigned his stock as security for an indebtedness to a third party, and afterwards becomes indebted to the corporation, the corporation may sell the equity of redemption of such stock in the same manner: Mich. 4161c6.

NOTE. — <sup>a</sup> Sixty days: Minn. <sup>b</sup> See § 9000.

§ 9033. **Increase of Stock.** The capital stock of every corporation subject to this chapter, the amount whereof has been fixed and limited by such corporation according to law, shall remain so fixed, subject to be increased or reduced pursuant to the provisions of this chapter: Mass. 106,33; Mich. 4161a1.

"The capital may be subsequently increased to the amount allowed by its charter, by adding the number of shares:" Me. 48,4.

The stock of a corporation formed for purposes specified in § 9011, when insufficient, may be increased by majority vote of the stock at any meeting to an amount not exceeding two million dollars: Me. 48,20.

So, five million dollars: Pa. Iron Mfg. Cos. 1; Mich. Ten million dollars: Ala. 1572.

At a special meeting called with thirty days' notice: Ala.

Every corporation which is subject to this chapter, at a meeting called for the purpose, may increase or reduce the amount of its capital stock, and the number of shares therein, within the limitations of its charter in the case of a chartered corporation, and within the limitations of this chapter if organized under general laws: Mass. 106,34; R.I. 155,2 & 4; Ind. 3857,3862; Mich.

Or at any annual meeting : Mich.

By vote of two thirds of all the capital stock : Mich.

A manufacturing corporation may increase or diminish its stock to any amount which may be deemed sufficient, and may also extend its business, but the amount of debts and liabilities are first to be reduced so as not to exceed such diminished capital : Mo. 2779.

No telegraph or gas-light company, chartered under the laws of this commonwealth, shall declare any stock dividend, or divide the proceeds of the sale of stock among its stockholders, nor create any additional new stock, or issue certificates thereof to any person whatever, unless the par value of the shares so issued is first paid in cash to its treasurer : Mass. 105,18.

When any corporation subject to this chapter, except a co-operative association or a gas company, increases its capital stock, its directors shall give written notice of such increase to each of its stockholders, in like manner as is provided in section twenty of chapter one hundred and five, and each stockholder may take his proportion of the new shares as is provided in said section ; and the shares which are not so taken may be sold or issued in such manner as its stockholders may by vote direct ; but no shares shall be so sold or issued for a less amount than the par value thereof : Mass. 106,37.

When a co-operative association increases its capital stock, the new shares may be sold or issued in such manner as the stockholders may by vote direct, but not for less amount than the par value thereof : Mass. 106,38.

When a gas company increases its capital stock, the new shares shall be sold and disposed of at public auction for the benefit of the corporation, in the manner provided in the two following sections ; and only such number of shares shall be issued as, when so sold and disposed of, will produce the amount necessary for the purposes for which such increase is authorized : Mass. 106,39.

The shares must be sold at auction in Boston, or in the town where the corporation is located : Mass. 106,40.

Not exceeding two thousand shares of the stock of any such corporation shall be offered for sale on one and the same day ; and no share shall be sold or issued for a less sum, to be actually paid in cash, than the par value thereof : Mass. 106,41.

Every business corporation, having a special charter from the general assembly of this state, and authorized to do and perform its principal business outside the limits of this state, and having a capital stock divided into shares, which shall hereafter receive authority from the general assembly to increase its capital stock, shall within six months after such authority has been given, and before it shall have increased its capital stock either in full or in part as thus authorized, pay to the treasurer of this state not less than one hundred dollars and not more than five thousand dollars, as the same may be assessed and determined by the state board of equalization, upon the basis of the full amount of increase of capital thus authorized : Ct. 1889,204.

Such increase of stock must be made by vote of a majority of all the capital stock at a meeting called in the manner prescribed : Minn.<sup>b</sup> 2654.

By a majority vote at any annual meeting : Ind. 3857 ; 1889,211.

Whenever any corporation shall desire to call a meeting of the stockholders for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least sixty days, and to deposit a written or printed copy thereof in the post-office, postage prepaid, addressed to each stockholder, at his usual place of residence, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be extended or changed. An affirmative vote of the persons holding the larger amount in value of all the shares of stock shall be necessary to increase or diminish the amount of its capital stock, or to extend or change its business as aforesaid : Mo. 2780.

A statement of the proceedings, showing a compliance with the provisions of this article, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of assets and liabilities of the corporation, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary; and such statement shall be acknowledged by the chairman, and recorded as provided in § 9030, and a certified copy of such recorded instrument shall be filed in the office of the secretary of state, who shall thereupon issue a certificate that such corporation has complied with the law made and provided for the increase or decrease of capital stock, as the case may be, and the amount to which such capital stock is increased or decreased; and such certificate shall be taken in all courts of this state as evidence of such increase or decrease of stock: Mo. 2781.

A certificate of such increase or reduction must be recorded as in § 9030: Mass. 106,56-7; R.I.; Minn.<sup>b</sup> 2656; Ala.

Or the directors become liable as in § 9026: R.I.

If any part of the capital stock be withdrawn or refunded to the stockholders before payment of all the debts contracted previously to record as above, all the stockholders are jointly and severally liable for such debts: R.I. 155,5. See also § 8125.

Each stockholder has a preference in taking such increased stock in proportion to his holding: Ala. 1572.

NOTES. — See § 9000.

**§ 9034. Preferred Stock.** If upon organizing a corporation under this article it is desired that any portion of the stock shall be preferred, the articles shall further set out the amount of such preferred stock, the number of shares thereof, the names of the subscribers therefor, and the number of shares of such stock subscribed by each shareholder: Mo. 1891, p. 79.

Whenever any corporation shall desire to call a meeting of its stockholders for the purpose of increasing the amount of its capital stock, and the directors thereof shall deem it advisable for the best interests of said company to submit, at the time and place of said meeting, to the stockholders whether said stock so proposed to be increased shall be preferred, and the amount, number of shares, the price per share, in case an increase shall be determined, and also the character thereof, and in case additional notice to such effect shall have been given for the time, as required by this article, for the purpose of increasing said capital stock, then, if on canvassing the votes of the said stockholders, as required by this article, it shall appear that all the stock of said company shall have been cast for the increase of its stock, and that all the stockholders have voted that the said increased stock shall be preferred, the said stockholders shall also, at said time and place, by like vote, determine the amount, the number of shares, and the price per share of said increase, and what rate of dividend, not exceeding seven per cent per annum, shall be paid on said preferred stock, out of the net yearly income earned in any one current year, before any dividend shall be made and paid on the general stock of said corporation: Mo. 2784; 1891, p. 78.

**§ 9035. Certificate.** Each stockholder shall be entitled to a certificate of his stock, under the seal of the corporation, and signed by its treasurer (stating the number, Me.): Mass. 106,29; Me. 48,5.

In case of the loss of a certificate, a duplicate certificate may be issued upon such reasonable terms as the directors shall prescribe: Mass. 106,30.

Certificates of stock issued in violation of §§ 9031, 9033, shall be void, and the directors of the corporation issuing the same shall be liable to a penalty of one thousand dollars each, to be recovered by indictment in any county where any of them reside; but if any such director proves that before such issue he filed his dissent in

writing thereto with the clerk, or was absent, and at no time voted therefor, he shall not be so liable : Mass. 105,19.

Any officer of any corporation organized under this act, or any other person or persons, who shall fraudulently issue, or cause to be so issued, any stock, scrip, or evidence of debt of such corporation, or who shall sell or offer for sale, hypothecate, or otherwise dispose of any such stock, scrip, or other evidence of debt, knowing the same to be so fraudulently issued, shall be deemed guilty of a felony : Minn. 2682. See § 9026.

**§ 9036. Transfer of Stock.** The stock of such company shall be deemed personal estate, and shall be transferable (1) in such manner as shall be prescribed by the by-laws of the company : Ind. 3858 ; Mich. 4161b5 ; S.C. 1885,105,7.

(2) As the directors prescribe, but only on the books of the corporation : Minn. 2643 ; 2657 ; 2677.

Shares may be transferred by the proprietor by an instrument in writing under his hand, which shall be recorded by the clerk in a book to be kept for that purpose : Mass. 106,30.

The purchaser named in such instrument so recorded shall, on producing the same to the treasurer and delivering to him the former certificate, be entitled to a new certificate : Mass. 106,30.

Stock is transferable as in Title I. : Me. 48,5.

For transfer in other states, see Art. 815.

The said corporation shall have authority in its by-laws to make all such regulations as may be deemed necessary and proper for the issuing and transfer of such stock, or for collecting and enforcing, by sale or otherwise, all subscriptions made thereto : S.C. 1885,105,7.

**§ 9037. Liabilities of Stockholders.** (And see § 8140.) The members or stockholders in any corporation which is subject to this chapter shall be jointly and severally liable for its debts or contracts in the following cases, and not otherwise : —

First. For such as may be contracted before the original capital is fully paid in : Mass. 106,61 ; R.I. 155,1 & 13. But only those stockholders who have not paid in full the par value of their shares, and those who have purchased such shares with knowledge of the fact, shall be liable for such debts : Mass.

They remain so liable until the certificate (§ 9030) is recorded : R.I.

Second. For the payment of all debts existing at the time when the capital is reduced, (1) to the extent of the sums withdrawn and paid to stockholders : Mass. 106,61 ; R.I. 155,5.

(2) To any extent : Pa. Mfg. Cos. 4.

Third. When special stock is created, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed : Mass. 106, 61 ; Pa. Mfg. Cos. 10.

Fourth. For all sums of money due to operatives for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment : Mass. 106,61 ; Pa. Iron, etc. Cos. 8 ; Mfg. Cos. 11 ; Trading Cos. 7.

The stockholders and members of manufacturing and mining corporations shall only be liable for the amount of the stock subscribed by them respectively ; and privileges or immunities which they have heretofore granted to such corporations shall, upon the same terms, equally belong to all citizens who may desire to incorporate themselves for the same purpose : provided, that such stockholders shall be individually liable for all

debts due and owing laborers, servants, apprentices, and employees for services rendered such corporation : Ind. 3869.

If the capital stock of any such corporation shall be withdrawn, and refunded to the stockholders, before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively : Mich. 4161c ; Minn.<sup>b</sup> 2658.

The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder, by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation : Mich. 4161c8.

The stockholders are jointly and severally liable individually at all times for all moneys due and owing to the laborers, servants, clerks, and operatives of the company, in case the corporation becomes insolvent : Tenn. 1858.

No stockholder shall be personally liable for the payment of any debt contracted by any company formed under this act, which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of such debt shall be brought against such company within one year after the debt shall become due ; and no suit shall be brought against any stockholder in any such company for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such company, nor until an execution against the company shall have been returned unsatisfied in whole or in part : Mo. 2782.

Each stockholder in such corporation shall be jointly and severally liable to the creditors thereof in an amount, beside the value of his share or shares therein, not exceeding five per cent of the par value of the share or shares held by him at the time the demand of the creditor was created : provided, that such demand shall have been payable within one year ; provided also, that proceedings to hold such stockholder liable therefor shall be commenced within two years after such debt may have become due, and whilst he remains a stockholder therein, or within two years after he shall have ceased to be such stockholder : S.C. 1885,105,3.

Any such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all debts due from them to such corporation : Mich. 4161b5 ; Minn. 2643 ; 2657.

Which may be enforced by advertisement and sale in the manner provided for selling delinquent stock : Minn. 2643.

Any manufacturing company, which has a lien on the stock as provided, may give notice to the stockholder to pay his indebtedness within three months, and in default of such payment may sell the stock, after notice by advertisement : Mich. 4161c3.

But no stock so issued or sold, purporting to be full paid, shall be subject to any further assessment in the hands of the lawful holder thereof, without his consent : Minn. 2677.

**Remedies.** No stockholder or officer in such corporation shall be held liable for its debts or contracts, unless a judgment is recovered against it, and it neglects for thirty days after demand made on execution to pay the amount due : Mass. 106,62 ; Pa. Trading Cos. 9.

Stockholders are never liable beyond their shares, paid up to par, except in case of failure to file the annual return (§ 9024), when they are liable to an additional amount equal to such par value : R.I. 155,13.

Any such member or stockholder who pays, on a judgment or otherwise, more than his proportional share of any such debt, shall have a claim for contribution against the

other members or stockholders : Mass. 106,61 ; R.I. 155,23 ; Pa. Trading Cos. 8 ; Mich. 4161c8.

Any officer or stockholder of a company who voluntarily, or by compulsion, pays a debt of the company for which he is made liable by this act, may recover the amount so paid, in an action against the company for money paid for its use, in which action the property of the company only shall be liable to be taken, and not the property of any stockholder : Pa. Trading Cos. 6.

After execution against the trading company returned unsatisfied, the creditor, or any other creditor, may file a bill in equity, in behalf of all other creditors, against the corporation or stockholders and any officers liable for its debts and contracts, for the recovery of such sums as they may be personally liable for, but no stockholder shall be liable to pay a larger sum than a sum proportionate to the amount of stock held by him at the time such suit was begun : Pa. Trading Cos. 10 & 11.

No loan of money shall be made to any stockholder ; and the officers assenting thereto are jointly and severally liable to the extent thereof : R.I. 155,7 ; Pa. Trading Cos. 3 ; Tenn. 1856 ; Mo. 2775 ; Miss. 1043. Compare § 9045.

This liability to extend in favor of innocent stockholders as well as creditors : Tenn. 1856.

**Full Liability Corporations.** Every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation that the corporation thereby formed is intended to be a full liability corporation ; and in case of an existing corporation, which is not a full liability corporation, it may become such by filing in the offices where certificates of incorporation are required to be filed a supplemental certificate stating that thereafter the corporation intends to be a full liability corporation, which certificate shall be executed and acknowledged by the president and treasurer of the corporation or by the board of directors, and shall have annexed thereto a copy of a resolution, adopted by a two-thirds vote of the board of directors, and the written consent of all the stockholders of the corporation, authorizing and consenting to the change of the corporation to a full liability corporation. If the corporation is formed as or becomes a full liability corporation all the stockholders of the corporation shall be severally individually liable to its creditors for all its debts and liabilities, and may be joined as defendants in any action against it. No execution shall issue against any stockholder individually until execution has been issued against the corporation and returned unsatisfied, and all the stockholders shall contribute a proportionate share, according to the number of shares of stock owned by each, of the amount paid by any stockholder on a judgment recovered against him individually for a debt of the corporation, and he may recover from the other stockholders in the corporation, in a joint or several action, the proper portion due by them and each of them of the amount paid by him on any such judgment : N.Y. 1892,691,6.

NOTES. — See § 9000.

§ 9038. **Dividends** (of profit, Me., Minn., Neb., Mo., of net earnings, S.C.) may be made (by the directors, Me., Minn., Neb., Mo.) ; but the capital (or the debts due, Me.) shall not thereby be reduced until all debts due from the corporation are paid : Me. 48,8 ; Minn. 2644 ; Neb. 1,16,38 ; S.C. 1885,105,7.

If it be so reduced or impaired, any officer who votes or member who aids in making such dividend is subject to fine and imprisonment : Me.

And sums received for such dividends by any stockholder may be recovered by any creditor : Me.

For the following states, see § 8161 : R.I., Pa.

All manufacturing corporations within this state shall on the first day of August in each and every year, unless some other specific day for that purpose be fixed in their

charter or by-laws, after reserving over and above their capital stock paid in as a working capital for said corporation a sum to be specified by their board of directors, and not exceeding the amount of one half of the capital stock paid or secured to be paid, declare a dividend of the whole of their accumulated profits exceeding the amount so reserved as a working capital : N.J. 1891,106.

The stockholders, in general meeting of any company incorporated for manufacturing or mining, and out of debt, may order dividends of capital stock ; but before such dividend is made, notice of the order shall be posted at the front door of the court-house of the county or corporation wherein the general meeting was held, on the first day of three successive courts, or published for three successive months in a newspaper circulating in the neighborhood : Va. 1139.

No telegraph or gas company shall declare any stock dividend, or divide the proceeds of the sale of stock among its stockholders, or create any new stock, or issue it, unless the par value of shares so issued is first paid in cash to its treasurer : Mass. 105,18.

Else, certificates of stock so issued are void, and the directors liable to a penalty of one thousand dollars, unless they have filed written dissent : Mass. 105,19.

A dividend must be declared whenever there is an amount sufficient in the hands of the treasurer to pay four per cent on the capital stock, and any such loan or failure to declare and pay the dividend shall render the directors assenting thereto individually liable for the amount thereof : this liability to extend in favor of innocent stockholders as well as creditors : Tenn. 1870.

But no such dividends shall be made and paid to stockholders while such corporation is in an insolvent condition ; and if the directors of any such corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted while they shall respectively continue in office : Mo. 2773.

No part of the capital stock in any manufacturing company shall be withdrawn or diverted from its purpose ; and no dividends of profits shall be declared when the company is insolvent, or would be rendered insolvent by the payment of such dividend ; and the directors who declared and paid such dividend, as well as the stockholders who received it, shall be jointly and severally liable to creditors whose debts then existed, to the extent of such dividend and interest, in case the corporation should be insolvent : Miss. 1880,1044.

The last two sections shall apply to all joint stock companies which are authorized to contract debts : Miss. 1880,1045.

**§ 9039. Executors, etc.** (See also § 8146.) No person holding stock in any such company, as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company ; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name : Mass. 106,66 ; Pa. Trading Cos. 12 ; Mo. 2776 ; S.C. 1885,105,3.

Every such executor, administrator, guardian, or trustee shall represent the shares of stock in his hands at all meetings of the corporation, and may vote accordingly as a shareholder ; and every person who shall pledge his stock as aforesaid may, nevertheless, represent the same at all such meetings, and may vote accordingly as a shareholder : Mo. 2777. And see § 8055.



**Art. 904. Powers.**

§ 9040. **General Powers.** (And see Art. 820.) Manufacturing corporations have succession, and shall be capable of being sued and of suing in any court of law or equity in this state, and they and their successors may have a common seal, and may make and alter the same at pleasure : Mich. 4161b2 ; Minn. 2667,<sup>b</sup> 2675<sup>c</sup> ; S.C. 1885,105,2 ; Ala. 1562.

To elect, in such manner as they shall determine, all necessary officers : Mich. Minn. 2667<sup>b</sup> ; Ala.

To fix their compensation and define their duties ; to ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same ; and to employ all such agents, mechanics, and other laborers as they shall think proper : Mich., Minn.<sup>b</sup>

To carry on the business, or accomplish the purposes expressed in the declaration : Ala. 1562.

To prove and open mines, to mine and prepare for market, or for their own use and consumption, coal, iron ore, and other minerals ; to erect and construct furnaces, forges, mills, foundries, manufactories, and such other improvements and erections as they may deem necessary ; to manufacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood ; to transport all of said articles, or any of them, to market, and to dispose of the same ; and to do all such other acts and things as a successful and convenient prosecution of said business may require : Pa. Iron Mfg. Cos. 1.

To construct and operate railways, canals, or roads, from its works or mines to any highway, railroad, or navigable waters, and transport persons and property thereon as a carrier, and for reasonable compensation ; and condemn lands therefor, but not a dwelling-house or yard, etc. ; and may purchase or hire boats or vessels, and aid in the construction of railroads : Ala. 1563.

Corporations created for the purpose of manufacturing any material, whether of wood or metal, may deal in the article so manufactured, or in articles properly connected therewith : Tenn. 1710.

Manufacturing companies heretofore or hereafter chartered under the provisions of this article shall have the power to erect on their own lands elevators, hoists, warehouses, and transfer tracks, and operate the same for the elevation, storage, and transfer of material, goods, wares, and merchandise for the public, and they may charge and collect reasonable compensation therefor : Tenn. 1864.

Such corporations shall have the right to purchase, use, or dispose of such patent rights as may be necessary or useful in their business in as full and ample a manner as is now allowed by law to individuals : Tenn. 1867.

Any corporation organized under the provisions of this article shall have authority to carry on its operations in any part of this state : Mo. 2783.

NOTES. — See § 9000.

§ 9041. **Ownership of Property.** (And see § 8204.) Every corporation which is subject to this chapter may in its corporate name purchase, hold, and convey such real and personal estate as is necessary for the purposes of its organization : Mass. 106,50 ; Pa. Iron, etc. 1 ; Mfg. Cos. 7 & 12 ; Ind. 3853 ; Mich. 4161b3 ; Minn. 2645,2668,2675 ; S.C. 1885,105,2 ; Ala. 1562.

Not exceeding ten thousand acres in the state : Pa.

They may "dispose of the same : " S.C.

May carry on its business, or so much thereof as is convenient, beyond the limits of this commonwealth : Mass. 106,50 ; Pa. Mfg. Cos. 7 ; Mich. 4161a7.

And may there purchase and hold any real or personal estate necessary for conducting the same : Mass. 106,50 ; Pa. Mfg. Cos. 7.

But shall not direct its operations or appropriate its funds to any other purpose than that specified in its agreement of association or its charter, as the case may be : Mass. 106,50.

Except as is provided in Title I. and in § 9018 : Mass.

Any such corporation may, from time to time, acquire and dispose of, and may construct, have, or otherwise dispose of, dwellings and other buildings ; but no power to sell or release the real estate of such corporation shall be exercised by the directors thereof, unless such power be expressly given in the certificates originally filed, without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same ; which consent shall be obtained at a meeting of the stockholders, to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper county, and such consent shall be evidenced only by the written signatures of said stockholders : Pa. Mfg. Cos. 12.

They may also take and hold such real estate (1) as may be mortgaged to such companies to secure any debt, or may be taken in payment of any indebtedness previously contracted, or may be purchased on judgments, decrees, or mortgages obtained or made for such debts ; and all such conveyances of land, whether made heretofore or hereafter, are hereby ratified and declared to be valid : Ind. 3853 ; Mich. ; Minn.<sup>b</sup>

(2) As they may be obliged or deem it for their interest to take in settlement of any debts due to said corporation : S.C. 1885,105,2.

It may also purchase and hold any grant of lands made by the general government to aid in any work of internal improvement in this state : Mich. 4161b3.

They shall have the power to take and hold all such real estate as may be mortgaged to it or conveyed in trust to secure any debt due to the corporation arising from a sale or purchase of its territorial right under its letters patent, and shall have the power to purchase any such real estate at any sale thereof, and to hold, sell, or otherwise dispose of the same as may be deemed expedient : Tenn. 1868.

May erect such mills, machine shops, dwellings, and other buildings thereon as may be deemed necessary or desirable : S.C. 1885,105,2.

**§ 9042. Sales and Mortgages.** (See §§ 8206, 8208.) Every such corporation may make and issue bonds, with or without coupons attached, bearing interest not exceeding six per centum per annum, and sell, exchange, or otherwise dispose of the same, upon such terms and conditions as they may deem advisable ; and such bonds, and the interest thereon, may be secured by a mortgage or mortgages upon the corporate franchises, real and leasehold estate : provided they shall not issue bonds for a greater sum than three times the amount of their capital stock paid in : Pa. Iron Mfg. Cos. 2.

Any corporation organized under this act may mortgage, sell, or lease its real estate, or any part thereof, if authorized or approved by a majority in amount of its stockholders, but not otherwise : Minn. 2679.

It may borrow money, and mortgage or otherwise convey or pledge its property, real or personal, and its franchises, to secure the payment of the money so borrowed, or any other debt contracted by it ; but it has not power to borrow a sum exceeding its capital stock, or at a rate of interest exceeding eight per cent, payable semiannually ; nor must such mortgage, conveyance, or pledge be made otherwise than by the consent of the holders of the larger part in value of the capital stock, expressed by vote at a meeting of the stockholders called for that purpose : Ala. 1562.

**§ 9043. Bonds.** (See § 8208.) Any corporation formed for the purposes contemplated by this article, may, by a vote of its stockholders, representing at least two thirds of its stock, at a meeting called for that purpose, and in compliance with section 9020 authorize the holders of any bonds that may have been issued by said corporation to exchange the same for and convert the principal thereof into stock of said corporation, at such rates and upon such terms as may be agreed upon as aforesaid, provided such shares of stock shall not be valued at less than their market or actual value; and as said bonds shall thus be exchanged and converted, the stock issued for and in payment of such bonds shall, as the same shall be exchanged and converted, form part of the stock of said corporation, and be entitled to all the benefits and privileges of any other stock of said corporation: provided, however, that the amount of stock thus issued, together with the stock theretofore issued, shall not exceed, in the aggregate, the amount of stock which said corporation is authorized to issue by law: Mo. 2789.

**§ 9044. Other Debts.** (And see § 8207.) The whole amount of the debts which any such company at any time owes, shall not exceed (1) the amount of its capital stock paid in: Pa. Mfg. Cos. 6; Miss. 1046.

(2) Double the amount of capital paid in: S.C. 1885,105,4.

Exclusive of mortgage debts: S.C. Unless such debt be for unpaid purchase money for lands bought, which debt shall only be a lien upon and collectible from said land: Pa.

The whole amount of the debts of any such company, at any time, shall not exceed an amount equal to three fourths of the actual and available assets of such company, and in case of any excess the directors under whose administration it occurs shall be jointly and severally liable, to the extent of such excess, for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: provided that any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the fact to the stockholders at a meeting which they may call for that purpose: Pa. Trading Cos. 4.

No loan of money shall be made at any time to any stockholder thereof, nor to any one else: Tenn. 1870. See § 9037.

**§ 9045. Stock in other Companies.** A manufacturing or other company may hold not over ten per cent of the stock of a gas company, proposing to introduce illuminating gas in the town where it is located: Mass. 106,78.

It shall and may be lawful for any incorporated company of this commonwealth, or elsewhere, to subscribe and take shares of stock in any company incorporated for the purposes named in this section of this act, or to purchase the bonds or stock, or guarantee the payment of said bonds and the interest thereon, or either interest or principal: Pa. Iron Mfg. Cos. 6.

And it shall be lawful for any manufacturing company of this commonwealth, incorporated for the purposes named in said section, to subscribe for, purchase, hold, and dispose of bonds or stocks in any incorporated company of this commonwealth, or elsewhere, or to guarantee the payment of such bonds and the interest thereon, or either principal or interest: provided that this act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier: Pa. 1887,274.

Such company shall not use its funds in the purchase of stock in any other corporation: Ind. 3858.

Any manufacturing company, now or hereafter organized in this state, may take

and hold stock in any corporation organized for the purpose of furnishing water power : Ind. 3872a.

Any corporation organized under this act may take, acquire, and hold stock in any other corporation, if a majority in amount of the stockholders shall so elect : Minn. 2680.

All corporations heretofore created, or which may hereafter be organized, for the purpose of mining and operating mines in the state for copper, coal, or iron, or other valuable metal or metallic substance, are authorized upon vote of the stockholders, three fourths of the stock being represented, and cast in the affirmative, to subscribe for, purchase, hold, or dispose of stock in any railroad company, whose line of road shall be contiguous to the works of such company, or so near thereto as to be sued by them in carrying on their necessary operations : Tenn. 1860.

For the purpose of raising the money to pay for such stock, or the subscription therefor, such corporations are authorized to indorse the bonds of said railroad company, or to issue company mortgage bonds in such amount, and to mature at such time, and to bear such rate of interest not exceeding the lawful conventional rate of interest existing, and to dispose of said bonds and apply the proceeds thereof as the stockholders and directors of such company may deem best for their interest : Tenn. 1861.

Said mining companies are authorized to mortgage their franchises and estates, real and personal, to secure the payment of the bonds indorsed or issued as aforesaid : Tenn. 1862.

Any corporation organized for the purpose of locating, building, encouraging, and establishing manufactories and manufacturing establishments in any city or town in this state, upon the assent of the holders of three fourths of the capital stock thereof, shall have authority to purchase, take, and hold stock in, and in its corporate capacity become a subscriber to, the capital stock of any corporation so aided or encouraged, to the amount and extent of the actual cash paid or other property contributed to any such manufacturing corporation : Wis. 1891,403.

§ 9046. **Eminent Domain.** The said corporation shall have the right, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, to condemn a right of way necessary for the transaction of the corporate business, not exceeding thirty feet in width, over the lands of any private person or corporation, and such right of way is hereby declared to be a public road : Tenn. 1854.

Any corporation, organized for the purposes named in this section, may appropriate any stream or streams, spring or springs, flowing, for the purpose of supplying the same with stream or water owned by such corporation, in the vicinity of its works, through or along or arising upon any grounds belonging to, and power, upon the said corporation filing in the office of the prothonotary of the court of common pleas of the county in which such works may be located, a draft ; whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams, spring or springs, thus appropriated, so as to diminish the usual accustomed and natural flow thereof : provided that every corporation thus appropriating any stream or streams, spring or springs, shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel : Pa. Iron Mfg. Cos. 4.

§ 9047. **Ultra Vires.** (And see § 8215.) It shall not be lawful for said corporation to divert its operations or appropriate its funds (1) to any other purpose, except as hereinafter provided : Mich. 4161a1 ; Minn. 2651 ; S.C. 1885,105,5.

(2) "In banking operations : " S.C.

Every manufacturing, mining, or quarry company incorporated under the provisions of this act, shall be confined exclusively to the purpose of its creation, as specified in its charter, and no such company shall manufacture or sell any commodity or articles of merchandise other than those therein specified: Pa. Mfg. Cos. 13.

No such company shall engage in, nor shall it permit any of its employees or officials to engage in, the buying or selling, upon the lands possessed by it, of any wares, goods, or commodities, or merchandise, other than those specified in their charter, or necessary for the manufacture of the same: Pa. Mfg. Cos. 13.

In Georgia there is "an act to authorize manufacturing and mining companies to become incorporated as savings banks:" Ga. 141,1.

## **Art. 905. Consolidation and Dissolution.**

§ 9050. Provision is made for the consolidation of manufacturing corporations having objects of the same or similar nature, by agreement of the trustees stating the terms and consolidation, ratified by a vote of two thirds of all the stock, at a meeting of each company: N.Y. 1892,691,8-9.

So, three fifths: Mo. 2786,2788.

If any stockholder, not voting in favor of such agreement to consolidate, shall at such meeting, or within twenty days thereafter, object to such consolidation and demand payment for his stock, such stockholder, or such new corporation if the consolidation takes effect at any time thereafter, may at any time within sixty days after such meeting apply to the supreme court for the appointment of three persons to appraise the value of such stock: N.Y. ib. 9.

Such new corporation, in addition to the general powers of corporations, shall enjoy the rights, franchises, and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties, and provisions contained in this title, so far as the same may be applicable to the purposes for which it shall have been organized and expressed in the agreement for consolidation, and may prosecute or carry on any kind of business which each of the consolidating corporations was authorized by law to conduct: N.Y. ib. 10.

Upon such consolidation all the rights, franchises, and property of the consolidating companies is vested in the new company without any deed of transfer, and the rights of creditors are not impaired, but the new corporation succeeds to them, and the stockholders continue subject to all liabilities existing against them before the consolidation; and no action at law is abated thereby: N.Y. ib. 11,12; Mo. 2786.

All the property and effects of such consolidated corporation shall be liable to be taxed as other property in this state, any provision in the charter of any of said corporations to the contrary notwithstanding: Mo. 2787.

On such consolidation, the parties may, by their agreement of consolidation, adopt the name and charter of either corporation as the name and charter of the consolidated corporation, and may make such changes and provisions as to the amount of stock and the number of directors of the consolidated corporations as they may think proper: Ala. 1568.

The corporation so formed by consolidation shall be entitled to all the property and rights of each of the corporations so uniting, and liable to the debts and obligations of each of them: Ala. 1569.

Any two or more mining, quarrying, or manufacturing corporations may unite and consolidate their capital stock, property, and business, on the recommendation of the board of directors of each of the corporations proposed to be consolidated, when adopted by a vote of the persons holding the larger amount in value of the capital stock of each corporation: Ala. 1565-1566.

§ 9051. **Reorganization.** In any case where any company, organized under any general or special act of the legislature of this state for manufacturing purposes, has heretofore become, or is or may become insolvent, it shall be lawful for the directors of the said company, in the name of the company, the consent of two thirds of the stockholders in interest or their legal representatives having been first obtained, to issue bonds, or additional stock, or both, in full or part payment or settlement of any or all claims against such company, with the consent of the claimants, and subject to the approval of the chancellor in case a receiver has been appointed; in any case where there has been no election for directors after the insolvency became known to the stockholders, or after a receiver has been appointed, it shall be necessary to obtain the assent of two thirds of the stockholders to the issue of such bonds or stock, and in all cases where stock is issued the total amount thereof shall not exceed the amount of the claims against the company for which stock is taken, and the amount so issued, together with the capital stock already authorized, although the same may not have been fully issued, shall be taken and considered to be the limit of the capital stock of the company, and a statement shall be filed with the secretary of state, showing the whole amount of capital stock so authorized and issued; if bonds are issued they may be made convertible into stock, at the option of the holders, if the directors deem it for the best interests of the company, and in that case the amount of such bonds must be included in the statement filed with the secretary of state, showing the amount of the capital stock authorized, and any stock issued under the provisions of this act may be issued in whole or in part as preferred stock, bearing interest not exceeding six per centum per annum, with or without further participation in the earnings of the company; if a receiver has been appointed, it shall be lawful for the chancellor to discharge and relieve him from further service on being shown that the directors have made provision for all of the claims against the company, according to this act or otherwise, excepting only such claims as were previously secured by mortgage, and to permit said company by its directors and officers to resume and conduct its business, and exercise all the franchises existing at the time of the insolvency: N.J. Suppl. Corps. 64.

Whenever any company organized under any law of this state, and engaged in manufacturing within this state, shall have been or shall be declared to be insolvent, and a receiver shall have been or shall be appointed, and no settlement shall have been made for three years thereafter, it shall be lawful for such company to enter into an agreement with its creditors for a settlement, with the consent and approval of the chancellor, and after such agreement shall have been signed by not less than two thirds in amount of the holders of the valid claims against such company, said agreement shall be binding upon all of the creditors of such company, the same as if they had all signed, to the end that the receiver may be discharged by the chancellor, and the effects and property of the company restored to its possession: N.J. Suppl. Corps. 65.

Any or all of the creditors of any corporation existing by authority of this commonwealth, and organized or chartered for any purpose designated in this chapter, which has been adjudged bankrupt or insolvent, or has made an assignment of its property for the benefit of its creditors, or any or all persons for whose benefit such corporation has assigned the whole or any part of its property, and such other person or persons in either case as they may select, may associate themselves for the purpose of forming a corporation to acquire the whole or any part of the property of such bankrupt or insolvent corporation, or of that assigned for the benefit of its creditors, and to carry on the business previously authorized to be carried on by said bankrupt or insolvent corporation: Mass. 106,15.

Such claims of creditors on property may be assigned to such new corporation in payment for shares at a reasonable valuation approved by the commissioner: Mass. 106,49.

**§ 9052. Dissolution.** When the stockholders owning one fifth or more in amount of the paid up stock of a corporation organized for manufacturing or mining file their petition, containing the statement that for two out of the three last preceding years the net earnings of the corporation have not been sufficient to pay, in good faith, an annual dividend of six per centum upon the paid up capital stock of the corporation, over and above the salaries and expenses authorized by the by-laws and regulations of the corporation, and that they therefore desire a dissolution of the corporation, the court shall make an order requiring the officers of the corporation within a reasonable time to file in court the inventories, accounts, and statements required; upon the filing thereof the court shall proceed as provided, requiring all persons interested in the corporation to show cause, if any they have, why such corporation should not be dissolved, and the court may adjudge a dissolution of the corporation in conformity with the provisions of this chapter, made upon finding that the statements contained in the petition are true, or that there exist any of the reasons for dissolving corporations enumerated in section 5656, and upon such proceedings being had, such other and further proceedings shall be had for the final settlement and adjustment of the affairs of the corporation as are hereinbefore provided to be had: O. 5673.

In Michigan there is an elaborate statute for the winding up of mining and manufacturing corporations in a bill in chancery, a trustee being appointed, and the estates distributed after the debts are paid with surplus to the stockholders; and the trustee may make sale under the order of the court, which will pass good title, and not be questioned in any suit after one year from the conveyance of such property by the trustee, and confirmation thereof by the court: Mich. 4161d7-4161g4.

The dissolution of any such corporation shall not affect any remedy against it or its stockholders or officers for liabilities incurred previous thereto: N.Y. 1892,691,5.

The act of 1891, chapter 137, amends the statute of 1889,262, for the winding up of mining and manufacturing corporations, allowing any stockholder to file a bill setting forth facts, assets, and debts; and if it shall satisfactorily appear to the court that the corporate existence of said corporation has expired, it may decree its winding up, and appoint a trustee for that purpose: Mich. 1891,137.

## **Art. 907. Suits.** (See, generally, Art. 830.)

**§ 9070. Against Stockholders.** The clerk, or other record officer, shall furnish a judgment creditor, after execution unsatisfied, a list of all officers and stockholders at the time of suit commenced: Mass. 106,63.

After execution so returned, any creditor may file a bill in equity on behalf of himself and all other creditors against all officers and stockholders for any and all their personal liabilities: Mass. 106,64.

Sums paid in such suits by stockholders shall be assessed *pro rata* to the extent of their stock at par: Mass. 106,65.

**§ 9071. Other Suits.** All corporations for mining, manufacturing, or trading purposes, whether created by general or special acts, whose charters may have expired, may bring suits, and maintain and defend suits already brought, for the protection and possession of their property, and the collection of debts and obligations owing to or by them, and sell, convey, and dispose of their property, and make title therefor, as fully and effectually as if their charters had not expired; and the officers last elected, or the survivors of them, shall be officers to represent said corporations for such purposes, and if no officers survive the stockholders may elect officers under their by-laws: provided, that this act shall be construed only so as to enable said corporations to realize and divide their assets and wind up their affairs, and not to allow them to transact new business: Pa. Mfg. Cos. 14.

§ 9072. **Service** of any notice or legal process against any corporation formed or existing under this act may be made on the president, secretary, or treasurer, or upon the agent in charge of any business office of such corporation within this state, or, if neither of such officers or agents can be found, then such service may be made by posting a true copy thereof in some conspicuous place at the business office of the corporation in this state: Mich. 4161c9.

§ 9073. **Execution.** The real or personal estate of the company may be attached or levied upon: R.I. 155,19.

Every agent or person having charge of corporate property shall, on request, furnish to any officer having a writ or execution against the corporation the names of the directors and a schedule of all property, including debts, known by him to belong to the corporation: Me. 48,9.

An officer having an execution against the corporation, and unable to find property liable to seizure, or the creditor, may elect to satisfy it in whole or in part by a debt due the corporation, and the creditor is entitled to an assignment of such debt by the corporation, and may enforce it upon the officer holding the evidence thereof: Me. 48,10-11.

§ 9074. **Special Provisions.** In all suits against corporations established by the laws of this commonwealth, when it appears to the court that one of the objects of the suit is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, any such stockholder or officer may be permitted, on petition, to defend said suit: Mass. 106,70.

So, the stockholder may contest the validity of the claim as against the company: R.I. 155,22.

The circuit court shall have jurisdiction over the directors, managers, trustees, and other officers of corporations now existing or hereafter organized under and by virtue of this article: first, to compel such directors, managers, trustees, and other officers to account for their official conduct in the management and disposition of the funds, property, and business committed to their charge; second, to order, decree, and compel payment by them to the corporation which they represent, and to its creditors, of all sums of money, and of the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted by any violation of their duties or abuse of their powers as such directors, managers, trustees, or other officers of such corporation; third, to suspend any director, trustee, manager, or other officer from exercising his office whensoever it shall appear that he has abused his trust; fourth, to remove any such director, trustee, or other officer, upon proof or conviction of gross misconduct; fifth, to direct, if necessary, new elections to be held by the body, or board, or stockholders, duly authorized for that purpose, to supply any vacancy created by such removal, and at such election no person so removed or suspended shall be eligible as a director, trustee, or other officer of such company; sixth, to restrain and prevent any alienation of property of the company by said directors, trustees, or other officers, in cases when it may be threatened, or there is good reason to apprehend that it is intended to be made in fraud of the rights and interests of such company: Mo. 2790.

In proceedings under this article, the court may appoint one or more receivers to take charge of the business, property, and effects of such corporation, and to collect, sue for, and recover the debts and demands that may be due, and the property that may belong to such corporation, who shall in all respects be subject to the control of the court: Mo. 2791.



**Art. 908. Foreign Companies.** (See also §§ 9040, 9041.)

§ 9080. **Companies of other States.** Manufacturing corporations not established by the laws of this state, doing business in the state, are authorized and empowered to acquire, hold, and convey real and personal property, and shall conform to the laws of the state as to returns and taxation, the same as domestic corporations: N.H. 148,21.

Manufacturing corporations of other states which have appointed an attorney under § 8403, may hold real estate in the state necessary for their business: Mass. 1888,321.

Any company, incorporated under the laws of any other state for the manufacture of any form of iron, steel, or glass, may erect and maintain buildings and manufacturing establishments within this commonwealth, and take, have, and hold real estate, not exceeding one hundred acres, necessary and proper for such manufacturing purposes: Pa. Escheats, 45.

Provided that such real estate is subject to taxation in the state, and the corporation may not employ a greater amount of capital than the same kind of corporation is entitled to employ if organized under the laws of this state, and provided that such foreign corporation is liable to taxation not exceeding that imposed on similar corporations of this state, and shall make the same returns to the auditor-general: Pa. Escheats, 45.

Corporations created by the laws of any state of the United States other than the state of Indiana, and organized for the purpose of manufacturing goods, wares, and merchandise, or for the purpose of mining, shall have the same right to purchase and hold real estate for the purpose of their business, and to convey or mortgage the same, as corporations organized for similar purposes under the laws of this state: Ind. 3879.

Corporations organized under the laws of any state of the Union, or of any foreign country, either wholly or in part for any of the purposes contemplated by this act, upon recording copies of their charter, or articles of incorporation, or memoranda of association, as provided in § 8402, and upon filing in the office of the secretary of state a resolution, as required, and appointing an agent for service of process, may, for such purposes, carry on business in this state, and shall enjoy all the rights and privileges, and be subject to all the restrictions and liabilities, of corporations existing under this act: Mich. 4161d6.

Every foreign corporation actually engaged in manufacturing within this state, shall, upon the written request of any resident creditor thereof, within sixty days from the time of making such request, and annually thereafter upon a like request, file in the office of the secretary of state of this state a statement showing the capital stock subscribed, the amount thereof actually paid in, the full name of each of its stockholders, and the amount of stock held by each; and shall at the time of so filing the first of said statements also file in such office a certified copy of its articles of organization or association. Such written requests may be served by mail upon the president, secretary, or other principal officer of said corporation, or personally upon any officer or agent of such corporation who may be within this state: Wis. 1770a.

**Art. 909. Taxation.** (See generally Art. 826.)

§ 9090. **Method.** (A) Every such corporation shall be taxed on all of its property except real estate, (1) in the town, city, or village where its principal business office is situated: N.Y. 1890,567,10.

(2) Where such personal property is; and must make returns accordingly: Mo. 1891, p. 77.

(B) "Upon their capital stock at its actual value and accumulated surplus:" N.J. Suppl. Corps. 57.

(C) All real and personal estate of a manufacturing company shall be taxed "the same as" that of an individual: N.J. Suppl. Corps. 59; Mich. 4161d; Io. 1880,57,1.

And machinery is regarded as real estate: Io.

To encourage the introduction of factories in this state, the machinery used for the manufacture of cotton or woollen goods, yarns, or fabrics composed of these or other materials, or for the making of all kinds of machinery or implements of husbandry, or all other things or articles not prohibited by law, the manufactured goods and the materials used therefor, the buildings in which the machinery is located and grounds upon which situated, or which may be within the necessary enclosure around such buildings, also all warehouses and other storehouses used exclusively by the company in its business and adjacent to the factory and its enclosures, and also the offices of the officers and employees adjacent to and located on the grounds of such factory, and used by them alone, but shall not apply to any railroad shops or machine works which are the property of railroads, and no other property, shall be and is hereby declared to be exempt from all taxation, state, county, and municipal, for the period of ten years from the time such factory is completed and in operation: Miss. 1882,49,1.

## TITLE IV.—INSURANCE COMPANIES.

The insurance laws of many of the states are very elaborate, and so bulky that, as they are only of interest to a few large corporations, all of which possess the original statutes, it has been deemed by both publisher and author unadvisable to insert them in the first edition of this volume. The insurance laws of New York and Massachusetts have served as models to most of the states; but those of Ohio, Wisconsin, and other Northwestern states are even more comprehensive. California has also codified the law of the insurance contract specially, as between the parties; in other states, this has been left to common law principles. Most of the states have a "standard form" of policy, to which all companies doing business therein must conform.

## TITLE V.—MONEYED CORPORATIONS.

### CHAPTER I.—BANKS.

#### Art. 950.

§ 9500. **State Banking Laws.** It seems unnecessary to incorporate the state banking laws in this edition. Nearly all the states, except the newer states and territories, have special chapters in their corporation acts concerning banks and moneyed institutions; but these chapters are usually of old date, and have practically been superseded for so long a time by the United States national banking laws that they have become obsolete in use and form.

§ 9501. **Prohibition of Powers.** There are usually statutes in the state banking laws forbidding any person from issuing drafts, bills, notes, or other evidence of debt, payable to bearer or order, as a private bank, for the purpose of loaning them or putting them in circulation as money. For an example of such statutes see Me. 47,83; N.Y. 1882,117,302,409; Wis. 2021.

Banks or corporations having banking powers are also frequently forbidden to issue for circulation any bill or promissory note of a less denomination than one dollar. For an example of such statute, see Wis. 2022.

**§ 9502. Rate of Interest.** Banks and banking associations "organized under the provisions of this chapter" shall not take greater interest or discount than six per cent: Vt. 3520; 1884,41,34; N.Y. 1882,409,68; "but it may be calculated according to the established rules of banking:" Vt.

So, it may be taken in advance, with the current rate of exchange and a reasonable charge for collection: N.Y.; Wis. 1852,479,43.

## CHAPTER II.—SAVINGS BANKS.

### Art. 960. General Provisions.

**§ 9600. Investment of Funds.** The following abstract of the laws concerning the investment of moneys of savings banks can hardly, it is feared, be complete, but appears of such general interest, as showing what the several states and territories permit to their own institutions most strictly regulated in their investments, and which rules the courts would probably follow as to investments by trustees, that it has seemed worth while to prepare it. The states are continually amending these laws, however.

**(A) Government Bonds.** In all the states, probably without exception, savings banks are permitted to invest in bonds or notes of the United States: Mass.; Me. 47,100; Vt. 1883,12; R.I. 1886,568; Ct. 1800; N.Y. 1882,409; N.J. Sav. Bks. 19; O. 3806; Ind. 2721; Mich. 3208e6; Wis. 1876,384,8; Io. 1872,60,9; W.Va.; N.C.; Mo. 2859; Col. 284; Mon. G. L. 541; or in public funds, for which the faith of the United States is pledged to provide for the payment of interest and principal: Vt., N.Y., N.J., Mo; or in such bonds or funds of the District of Columbia: Me., Ct., N.Y.

**(B) State Bonds.** In the bonds or public funds of the state where the savings bank is located: Mass., Me., Vt., Ct., N.J., Ind., Mich., Wis., Io., Minn. 2386, Mo., Col., Mon.; but in Minnesota savings banks are not permitted to invest in state bonds issued before 1861.

Or in the bonds or public funds of any state in the Union: R.I., W.Va., N.C., Mon. If they are above par value on the New York Stock Exchange: N.C.

In the public bonds of any state which has not defaulted within ten years upon the interest or principal of any debt authorized by its legislature: N.Y., N.J., Ind., Mich., Minn. So, five years: O., Mo.

And in the bonds of certain specified states, as, for instance, New York: Mass., Vt., Ct. New Jersey: Ct. Pennsylvania: Mass. 1887,423; 1883,90; 1890,369; Ct. 1800. Ohio: Mass., Vt., Ct. Indiana: Mass., Ct. Illinois: Mass., Ct. Michigan: Mass., Ct. Wisconsin: Mass., Ct. Iowa: Mass., Ct. Kansas: Ct. Nebraska: Ct. Kentucky: Ct. Missouri: Ct.

Of any New England state: Mass., Me., Vt., Ct.

**(C) Municipal Bonds.** In bonds or notes of any town, city, or county in the state where the bank is located: Mass., R.I., O., Ind.

In the bonds or notes of the counties, cities, towns, villages, and school districts of the *same states* (see **B**, above) respectively, Me., Vt. Of the state where the savings bank is situated: Mass.

In the municipal bonds (not issued in aid of railroads, Vt.) of the cities and counties of ten thousand inhabitants or more in the states of New York, Me.; New Jersey, Vt.; Pennsylvania, Me., Vt.; Ohio, Me.; Indiana, Me., Vt.; Illinois, Me., Vt.; Michigan, Me.; Wisconsin, Me., Vt.; Iowa, Minnesota, Me., Vt.; Maryland, Me.; Kentucky, Me.; Missouri, Me., Vt.

Provided that no investment shall be made in any of the cities, towns, or counties in the states above named (except cities of seventy-five thousand inhabitants or more, Vt.), where the municipal indebtedness of such city, town, or county exceeds five per cent of its assessed valuation (except St. Louis, Mo.: Me.): Me., Vt.

In the municipal bonds of cities of five thousand inhabitants or more in the same states, Vt., when not issued in aid of railroads, and where the municipal indebtedness of such city is not allowed by law to exceed, and does not exceed, five per cent of its assessed valuation, Vt. In the municipal bonds of counties having twenty thousand population, Me. (and of cities of fifteen thousand inhabitants or more in the states of Nebraska and Kansas, Vt.), when not issued in aid of railroads, and where the municipal indebtedness of such county or city does not exceed five per cent of its assessed valuation: Me., Vt.

In the school bonds and independent school district bonds in the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, and Wisconsin, when the amount of such bonds issued does not exceed five per cent of the assessed valuation of the respective school districts, towns, boards of education, or cities issuing the same; in the public funds of all the states named in this section; in notes, with a pledge as collateral, of any of the aforesaid securities, including deposit books or deposit receipts issued by a savings bank, trust company, or banking association located in this state, such notes not to exceed the par value nor the market value of such collateral security: Vt.

But no savings bank, savings institution, or trust company shall hold, by way of investment and as security for loans, more than ten per cent of the capital stock of any one bank, banking association, or trust company, nor invest more than ten per cent of its deposits, nor more than thirty-five thousand dollars, in the capital stock of any such bank, banking association, or trust company, and no investments shall be made in the capital stock of any such banks, banking associations, or trust companies, loaned or loaned upon, to exceed in the aggregate one fourth of the deposits of any savings bank or trust company: Me. 47,100; Vt. 1888,12; N.J. Sav. Bks. 19.

Or in the public debt or bonds of any city, county, township, village, or school district of any state in the United States which shall have been authorized by the legislature of such state: Mich. 3208c6; Minn. 2386; N.C.: provided the total indebtedness of such municipality does not exceed five per cent of the assessed valuation: Mich., N.C.; except by a vote of two thirds of the board of directors such bonds may be purchased, if the total liabilities do not exceed ten per cent of its assessed valuation: Mich.

In the bonds of any water company in the state actually supplying water to any city or town, and earning its fixed charges: Me. 1891,56.

In bonds or notes of any city in New England whose net debt is not over five per cent of its value, or of any county or town in New England with a net debt not over three per cent: Mass.

In the bonds of cities, counties, and towns of five thousand inhabitants or more in that part of the state of Michigan lying south of the forty-fourth parallel: Vt.

In school or fire district bonds of any of the New England states: R.I. 1886,568.

In the bonds of any city or county of any state of the United States of America, which have been or may be issued pursuant to the authority of any law of any such state: provided no such city or county has, within ten years previous to making such

investment by any such saving bank or savings institution of this state, defaulted in the payment of any part of either principal or interest of any debt authorized by law of such state to be contracted; and provided further, that the total indebtedness of any such city or county is limited by law to ten per centum of its assessed valuation: N.J. Sav. Bks. 20.

In the stocks or bonds of any city, county, town, village, or school district in the states of Minnesota, Wisconsin, or Iowa, or in the territory now known as the territory of Dakota: Minn. 2386.

Which city, county, town, village, or school district had at least ten thousand inhabitants, as determined by the state or United States census taken next preceding the issue of the bonds or stocks tendered: provided that the bonded indebtedness of any such city, county, town, village, or school district so tendering bonds or stocks shall not exceed ten per centum upon the assessed valuation: Minn. 2386.

In the bonds of any city or county in the states of Illinois, Ohio, Indiana, Michigan, Iowa, Missouri, Kansas, Nebraska, or Wisconsin, issued pursuant to the authority of any law of such state: provided the entire bonded indebtedness of such city or county shall not exceed five per cent of the assessed value of the taxable property therein, as shown by the last assessment preceding the investment; and provided further, that such city or county has not defaulted in payment of any part of either principal or interest thereof within five years previous to making such investment: Mo. 2859.

(D) **Railroad Bonds.** In first mortgage bonds of any railroad<sup>a</sup> company (1) which has paid dividends of not less than four per cent per annum regularly, on their entire capital stock, for a period of not less than five years next previous to the purchase of such bonds, or in any consolidated mortgage bonds of any such company authorized to be issued to retire the entire bonded debt of such company: N.J. 1889,79.

(2) Completed, in the New England states, or in Pa., O., Ind., Ill., Mich., Wis., Io., Minn., Kan., Neb., Md., Ky., Mo.: Me.

(3) In the first mortgage bonds of the U. P., N. P., and C. P. railroads: Me.

(4) In "the railroad bonds of this state:" Me.

(5) Incorporated in New England, whose road is wholly or in part therein, and which has paid regular dividends for two years preceding on all its issues of stock: Mass. 1889,305. Or in first mortgage bonds of a New England railroad guaranteed by such railroad: Mass. Or in bonds or notes of any railroad incorporated in the state, with road in part or wholly therein, unencumbered by mortgage, and which has paid a dividend of five per cent for two years preceding: Mass.

In the first mortgage bonds of any railroad company incorporated under the authority of this state, which is in possession of and operating its own road, and which has earned and paid regular dividends and interest due on its bonds for three years next preceding such investment: Mo. 2859.

In the stock (1) of any dividend paying railroad in New England: Me.

(2) Of any railway in this state unencumbered by mortgage: Me.

In the car-trust securities (1) of any railroad not in default upon its first mortgage bonds: Me.

(2) Guaranteed by any car-trust or equipment company that has paid two dividends on its stock: Me.

In the first mortgage bonds of any railroad which has earned and paid the interest thereon regularly for the two years next preceding such investment: N.C.<sup>a</sup> 1887,412,16.

(E) In the stock and bonds (1) of any other corporation incorporated by the state, which earns and is paying regular dividends of not less than five per cent: Me.

(2) "As they deem safe and secure:" R.I. 155,52.

"In any national bank stock:" R.I., N.C.

Of New England or New York: Vt.

Of the state: Mass., Me., Vt., N.C.

Or trust or safe deposit company of the state : Mass. 1889,168 ; Me. ; Vt.

In the stock of any national bank in New England : Mass.

Or in notes of a citizen of the state secured by such stock at eighty per cent : Mass.

(F) It shall be lawful for said banks to discount, purchase, sell, and make loans upon commercial paper, notes, bills of exchange, drafts, or any other personal or public security ; but said bank shall not purchase, hold, or make loans upon the shares of its capital stock : Io. 1874,60,9.

(G) **Mortgages.** In first mortgage loans in the home state : Mass. 116,20 ; Me. ; Vt. 3579 ; N.Y. ; N.J. ; Io. ; Minn. ; W.Va. 54,81a,XVII. ; N.C. 1887,412,16 ; Mon.

Or in "contiguous" states (if within fifty miles of the bank) : W.Va.

And in New Hampshire : Me.

In Wisconsin, Iowa, or Dakota : Minn.

Or anywhere : Vt. 1884,41,23 ; R.I. ; Mich. ; N.C. ; Mo. ; Col.

Not exceeding sixty per cent of its value : Mass. ; Me. ; Vt.<sup>c</sup> 3580 ; 1884,41,23 ; W.Va.

Forty per cent : Vt.,<sup>b</sup> N.Y.<sup>b</sup>

Sixty-five per cent : N.Y.<sup>c</sup>

Fifty per cent : N.J.,<sup>c</sup> Mich., Io., Minn., N.C., Mo., Col.

Thirty per cent : N.J.,<sup>b</sup> Minn.<sup>b</sup>

Not more than seventy per cent of the assets may be invested in mortgages of real estate : Mass. ; Vt. 3579 ; Minn. ; W.Va. ; N.C.

So, sixty per cent : N.Y., Mo. Eighty per cent : N.J.

One sixth of such mortgages must be in the state : Vt. 1884,41,23.

No investment of deposit and surplus by savings banks, savings institutions, and trust companies shall be made upon mortgages of real estate, except upon first mortgages of unencumbered real estate, the amount of such investment not to exceed three fifths of the cash value of the property mortgaged, and not less than one sixth of the amount of such mortgages shall be upon real estate in this state, and not more than seventy per cent of the amount of the assets shall be invested in mortgages of real estate ; provided, however, that not exceeding fifty per cent of the amount of such assets may be invested in mortgages of real estate outside of this state. If the investment is on mortgage of unimproved or unproductive real estate, the amount of such investment shall not be more than forty per cent of the value thereof : Vt. 1888,15 ; and no mortgage investment shall be made by such corporation except upon the report of a committee of the trustees or their board of investment : Vt., Mo.

Whenever buildings are included in the valuation of real estate, upon which a loan shall be made by any such corporation, they shall be insured by the mortgagor in such company or companies as the trustees shall direct, and the policy of insurance shall be duly assigned, or the loss made payable, as its interests may appear to such corporation : Minn. 2389.

(H) **Real Estate.** In real estate occupied by the bank under restrictions : N.J. ; Ind. 2726 ; W.Va. ; N.C. ; Mo. 2861.

Or purchased under foreclosure sale : N.J., Ind., W.Va., N.C.

Or taken for a debt : W.Va.

Such must be sold within five years : N.J., W.Va., N.C.

So, three years : Ind. 2728.

(I) **Personal Security.** On notes (of any citizen of the state, Mass.) with collateral of any of the above securities respectively : Mass., Me., R.I., Mich., W.Va., N.C.

At not over eighty per cent of market value, and not exceeding the par value : W.Va. So, at eighty per cent of par : Mass. So, seventy-five per cent : N.C.

Or of state savings bank book deposits : Me., W.Va.

Of the deposit of the borrower in the lending bank, not over one half: Mass., N.C.

Or of stock of any railroad, seventy-five per cent on market value: Me.

No loan on personal security or personal property is allowed: N.Y.

No loan is allowed upon notes or bills, without collateral of securities as above, or bank stock: N.J. 1889,142.

Or pledge or mortgage of other personal property at the discretion of the trustees: Me.

In loans on personal security, or two approved names (resident in the state, or within fifty miles of the bank, etc., Vt.), (but not for more than one year, Mass., Vt., Minn., W.Va., N.C.): Mass.; Vt. 3582; 1884,41,25; R.I.; Ct. 1805; Minn.; W.Va.; N.C.

Nor can more than one third of the assets be invested in such loans: Mass., Vt., W.Va., N.C.

One half: R.I. One fourth: Minn.

Not more than three per cent of the deposits may be loaned to any one person or corporation: Ct. 1804.

So, one half of one per cent: Minn. Five per cent: N.C.

One fifth of the capital only: O. 3807.

It may loan to any county, city, or town of the home state: Me. Or N.H.: Me.

To corporations having real estate and doing business in this state: Me.

The money received on deposit, and other funds of the institution, society, or bank, may be invested in or loaned on any stocks or real security, or be used in purchasing or discounting bonds, bills, notes, or other paper, subject to the following restrictions: that any security for money or other valuable thing which may have become payable, other than bonds or certificates of debt of this state or the United States, or of corporations, shall be purchased for less than the full value thereof, with all the interest due thereon; and no debt or claim to become due, other than such bonds or certificates, shall be purchased or discounted at a rate of discount or interest exceeding the rate of one half of one per cent for thirty days, but the interest in any case may be received in advance: Va. 1179.

In the notes of any citizen of this state, with a pledge as collateral of the stock of any bank or banking association incorporated under the authority of this state or the United States at no more than eighty per cent of the market value, and not exceeding the par value thereof: provided that such corporation shall not hold as security for loans more than one quarter of the capital stock of any one bank or banking association. Savings banks may deposit sums not to exceed twenty per cent of their deposits, on call, in such banks or banking associations, and may receive interest for the same: W.Va. 54,81a,XVII.

In loans upon the personal notes of the depositors of the corporation, but not exceeding one half of the amount of his deposit, to a depositor; and in each case the deposit and the book of the depositor shall be held by the corporation as collateral security for the payment of such loan: N.C. 1887,412,16.

**(J) Proportions of Investment.** Only three fifths of the deposits may be invested as above: Mich.

Fifteen per cent of deposits must be in United States bonds, or deposited in a bank, and not over ten per cent of deposits, capital, and surplus in any one bank: Mich. 3208c6.

The remainder of such deposits may be invested in notes, bills, or other evidences of debt, the payment of which is secured by the deposit of collateral security consisting of personal property, of known marketable value, worth net per cent more than the amount so loaned, and interest for the time of the loan; or may be deposited in any national bank: Mich. 86,3208c6.

Such corporation shall not hold, both by way of investment and as security for loans, more than one quarter of the capital stock of any one bank, nor invest more than ten per centum of its deposits, nor more than one hundred thousand dollars, in the capital of any such bank : N.C. 1887,412,16.

**(K) Deposits.** A savings bank, savings institution, or trust company may deposit on call in banks, banking associations, or trust companies in this state, or in the cities of New York, Boston, or Chicago, or in national banks in the cities of St. Paul, Minneapolis, and Kansas City, with or without interest, as may be agreed upon, sums not exceeding in the aggregate twenty per cent of the assets of such savings bank, savings institution, or trust company : Vt. 1888,14.

Savings banks may deposit sums not to exceed twenty per centum of the amount of their deposits, on call, in the national banks incorporated under the authority of the United States, or banks incorporated under the authority of this state which provide the same security as the aforesaid national banks, and may receive interest on the same : N.C. 1887,412,16.

All investments shall be charged on the books of the bank at cost : Me.

But at par when a premium is paid : Me.

**Connecticut Law.** Savings banks may employ not exceeding half of their deposits in making loans on personal security, and in the purchase of the public stocks or bonds of the United States, of any of the New England states, of the states of New York, New Jersey, Pennsylvania, Ohio, Kentucky, Michigan, Indiana, Illinois, Wisconsin, Iowa, Minnesota, Missouri, Kansas, Colorado, or Nebraska, or the District of Columbia, in the authorized bonds of any incorporated city in the New England states, of the cities of New York, Brooklyn, Albany, Syracuse, Utica, Troy, Rochester, and Buffalo in the state of New York, Philadelphia in the state of Pennsylvania, Detroit in the state of Michigan, Cleveland, Columbus, Dayton, and Cincinnati in the state of Ohio, Chicago in the state of Illinois, Milwaukee in the state of Wisconsin, and St. Louis in the state of Missouri, or of any town or borough of this state, or in the purchase of the authorized promissory notes of towns, cities, boroughs, and school districts of this state, or the stock of any bank in this state, New York city, or Boston, or the stock of any trust company in the city of Hartford or New Haven, and the first mortgage bonds of any railroad company located in any of the states aforesaid, which has paid dividends of not less than five per centum per annum regularly on its entire capital stock for a period of not less than five years next previous to the purchase of such bonds, provided its stock equals its entire issue of bonds, or the consolidated mortgage bonds of any railroad company incorporated by this state, and authorized to issue such bonds to retire the entire bonded debt of said company, provided said company has paid dividends as aforesaid ; and all other loans shall be secured by mortgage of unencumbered real estate in this state, worth double the amount of the loan secured thereon : *provided* that the Stafford Savings Bank of the town of Stafford, and the Stonington Savings Bank of the town of Stonington may loan, the former on land located in the county of Hampden in the state of Massachusetts, the latter on land in the county of Washington in the state of Rhode Island : Ct. 1800 ; 1889,224.

**Ohio, Indiana, and Michigan Law.** Such corporations may invest their funds in the purchase of stocks, bonds, or other evidences of the indebtedness of the United States, stocks and bonds of the state : O., Ind., Mich. ; bonds of any municipal corporation of this state : O., Ind. ; or school bonds of any municipal corporation, special school district, or body politic in this state, issued pursuant to law, to such an amount as may be deemed proper ; or in bonds issued by county commissioners within this state in pursuance of law : O. ; or the stocks or bonds of any state of the United States that has for five (ten, Ind., Mich.) years immediately preceding such investment paid the interest on its bonded debt in lawful money of the United States : O., Ind., Mich. ; but no such association shall at any time have an investment of a greater amount than



one tenth of its paid in capital in either of the last two named securities; or in bonds or notes secured by mortgages on unencumbered real estate situate in the county where the association is located, or in an adjoining county in this state, worth, exclusive of buildings, at least double the amount loaned thereon; but not more than fifty per centum of the amount of the paid in capital and deposits of any such association shall at any time be invested in such real estate securities; such associations may discount notes and bills of exchange, and may take, receive, reserve, and charge upon any loan or discount made upon a note, bill of exchange, or other evidence of debt, interest at the rate allowed by law; such interest may be reserved or taken in advance, at the time of making the loan or discount; and for interest taken, directly or indirectly, in excess thereof, the association shall be subject to the same penalties as natural persons; but in the purchase, discount, or sale of a bill of exchange, payable at another place than the place of such purchase, discount, or sale, the current rate of discount or premium may be charged and received in addition thereto: O. 3806.

NOTES. — <sup>a</sup> Does not apply to street railways: Mass. <sup>b</sup> If such real estate be unimproved: N.C.  
<sup>c</sup> Only if improved: Vt.

§ 9601. **Investments by Married Women.** Money deposited by a married woman in a savings bank is her property, and to be paid to her order (see also § 6353): Me. 47,117; R.I. 153,58; N.Y. 1882,409,258; Wis. 2020; Io. 1872, 60,15; Minn. 2381; Md. 45,11; W.Va. 54,81aXVI.; 1887,18,16; Nev. 962; Mon. G. L. 561; S.C. 1889,191.

And is not the property of the husband or parents: Me., N.Y.

So, of a minor: Mass. 116,29; Me.; R.I.; N.Y.; Mich. 3208d; Wis.; Io.; Minn.; W.Va.; Nev.; Col. 286; Mon; S.C.

But the bank may require an order from the parent or guardian of such minor.

Her or his receipt is a valid release: Me., R.I., N.Y.

And he or she may sue in his or her own name: Me. 1889,188.

But this does not apply to money fraudulently deposited in his or her name, and belonging to a third person: Me.

The savings bank or trust company may "at its discretion" pay to a minor or married woman such sum as is deposited to his or her credit: Vt. 1884,41,20.

When a deposit is made by one person in trust for another, with no other notice of trust, the deposit, on the death of the trustee, becomes the property of the beneficiary: N.Y.; Wis. 2020; Minn. 2381.

§ 9602. **Restrictions upon Officers.** No president, treasurer, clerk, or employee of any savings bank in this state shall act as agent or representative in this state of any foreign corporation engaged in the business of selling or negotiating any bonds, mortgages, notes, or other choses in action: Me. 1889,286,4.

## CHAPTER III. — INVESTMENT COMPANIES.

### Art. 965. Regulation of.

§ 9650. **Reports, etc.** Every corporation heretofore or hereafter organized under the laws of this state, whether by special charter or otherwise, which has power to, and does, sell or negotiate its own choses in action, or sell, guarantee, or negotiate the choses in action of other persons or corporations, as investments or as a business, shall be under the supervision of the inspector of finance of this state, and subject in that connection to all the laws relating to the examination and report of savings banks and trust companies. Said inspector, in an annual report of these corporations to the

general assembly, shall clearly describe the various classes of assets and liabilities of each, and state any special provision which has been made for the payment of such liabilities : Vt. 1888,16.

No person shall act in this state as the agent or representative of any such corporation, company, or firm organized under the laws of another state, or sell, offer for sale, or negotiate choses in action owned, issued, negotiated, or guaranteed by it, unless such corporation, company, or firm shall have (1) submitted itself and its financial condition to the examination of the inspector of finance of this state, in such manner as to enable him to make such a report thereof as is specified in section one, which report he shall make as often and in the same manner as is required of like corporations in this state : Vt. 1888,16.

(2) Furnished the bank examiner with reports, as above : Me. 1889,286 ; N.Y. 1890,506.

And obtained a license from him : Me. 1891,131.

Such companies are required to indicate the state or county where incorporated upon all their signs, advertisements, stationery, etc. : Mass. 1890,329.

Similar provisions are being adopted in many states.

§ 9651. **Foreign Companies.** Every foreign corporation engaged in the business of selling or negotiating in this state any bonds, mortgages, notes, or other choses in action, made, indorsed, or guaranteed by it, shall upon request of the bank examiner send to him a detailed statement of its condition, which statement shall clearly describe the various classes of its assets and liabilities as often at least as once in each year : Me. 1889,286,1 ; N.Y. 1890,506.

In Massachusetts there is a "commissioner of foreign mortgage corporations," vested with supervision over such : Mass. 1889,427.

There is a special statute authorizing the incorporation of mortgage loan or investment companies to do business *outside* the state : Mass. 1888,387.

In other states, the general act above applies to such companies also : N.Y.

## TITLE VI. — TRUSTS.

### Art. 990. Legal Restrictions.

§ 9900. **Prohibition of Trusts.** If any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership association or individual shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, understanding, or confederation with any other corporation, partnership, or individual to regulate or fix the price of (oil, lumber, coal, grain, flour, provisions, Io., Minn., Oka.), or any other commodity or article whatever ("to be sold within this state for speculation," Ala.) ; or shall create, enter into, become a member of or a party to any pool, agreement, combination, or confederation to fix or limit the amount or quantity of any commodity or article to be manufactured, mined, produced, or sold in this state, shall be deemed guilty of a conspiracy to defraud, and be subject to penalties as herein provided : Ill. 1891, pp. 206, 207 ; Io. 1890,28 ; Minn. 1891,10 ; Ky. 1890,1621 ; Mo. 7319,7321 ; 1891, p. 186, § 1 ; N.D. 1890,174,1 ; Ala. 1891,202,1 ; La. 1890,86,2 ; Oka. 6619.

**Penalties.** (See also § 9901.) A fine of (1) not less than one per cent, nor to exceed twenty per cent of its stock : Io., Mo., N.D.

(2) Five hundred to five (two, Ala.) thousand dollars : Ky., Ala., La.

- (3) Five hundred to fifteen thousand dollars : Ill.
- (4) One hundred to five thousand dollars : Minn.
- (5) One hundred dollars per day of such offence : Mo. ib. 3.
- (6) Fifty to five hundred dollars : Oka.

And the officers or agents are subjected to the same penalty (five hundred to five thousand dollars) : Ky., Mo., N.D., Ala., La.

Two hundred to one thousand dollars, Ill., N.M.; and imprisonment : Ill., N.D., N.M., Ala.

All contracts, agreements, understandings, and combinations made, entered into, or knowingly assented to, the purpose, or object, or intent of which shall be to limit, control, or in any manner to restrict or regulate the amount of production or the quantity of any article or commodity to be raised or produced by mining, manufacture, agriculture, or any other branch of business or labor, or to enhance, control, or regulate the market price thereof, or in any manner to prevent or restrict free competition in the production or sale of any such article or commodity, shall be utterly illegal and void, and every such contract, agreement, understanding, and combination shall constitute a criminal conspiracy. Every person who, for himself personally, or as a member or in the name of a partnership, or as a member, agent, or officer of a corporation, or of any association for business purposes of any kind, who shall enter into or knowingly consent to any such void and illegal contract, agreement, understanding, or combination shall be deemed a party to such conspiracy.

Every contract, agreement, understanding, and combination declared void and illegal by the first section of this act shall be equally void and illegal within this state, whether made and entered into within or without this state.

The carrying into effect, in whole or in part, of any such illegal contract, agreement, understanding, or combination as mentioned in the first section of this act, and every act which shall be done for that purpose by any of the parties, or through their agency, or the agency of any one of them, shall constitute a misdemeanor.

Any corporation now or hereafter organized under the laws of this state, which shall enter into any contract, agreement, understanding, or combination declared illegal and criminal by the first section of this act, or shall do any act towards or for the purpose of carrying the same into effect in whole or in part, and who shall not within thirty days from the time when this act shall take effect withdraw its assent thereto, and repudiate the same, and file in the office of the secretary of state such refusal and repudiation under its corporate seal, shall forfeit its charter and all its rights and franchises thereunder.

The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser, nor to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members : Mich. 1889,225.

All arrangements, contracts, agreements, trusts, or combinations between persons or corporations, made with a view or which tend to prevent full and free competition in the importation, transportation, or sale of articles imported into this state, or in the production, manufacture, or sale of articles of domestic growth, or product of domestic raw material (or for the loan or use of money, or to fix attorneys' or doctors' fees, and all arrangements, etc., Kan.) which tend to advance, reduce, or control the price or the cost to the producer or to the consumer of any such products or articles (or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, Kan.), (or which are designed or tend in a way to create a monopoly, Tenn.), are hereby declared to be against public policy, unlawful, and void : Kan. 1889,257; Tenn. 1891,218. It is not lawful for any corporation to issue or own trust certificates,

other than the regularly and lawfully authorized stock thereof, or for any corporation, agent, officer, or employees, or the directors or stockholders of any corporation, to enter into any combination, contract, or agreement with any person or corporation, or with any stockholder or director thereof, the purpose and effect of which combination, etc. shall be to place the management or control of such combination, or the manufactured product thereof, in the hands of any trustee with the intent to limit or fix the price or lessen the production and sale of any article of commerce, or to prevent, restrict, or diminish the manufacture or output of any such article : Kan. 1889,257.

It is unlawful for any person or persons, partnership, company, association, or corporation, organized for any purpose whatever, or engaged in the manufacture or sale of any article of commerce or consumption, or dealing in any natural product, to enter into any contract, agreement, or combination with any other person or persons, partnership, company, association, or corporation, organized and doing business in this state, or in any other state or territory and doing business in this state, engaged in the manufacturing, selling, or dealing in the same or any like manufactured or natural product, whereby a common price shall be fixed for any such article or product, or whereby the manufacture or sale thereof shall be limited, or the amount, extent, or number of such product to be sold or manufactured shall be determined, or whereby any one or more of the combining or contracting parties shall suspend or cease the sale or manufacture of such products, or whereby the products or profits of such manufacture or sale shall be made a common fund to be divided among the respective persons, partnerships, companies, association, or corporation so entering into such contract, agreement, or combination : Neb. 1889,69.

Pooling between persons, partnerships, companies, associations, or corporations engaged in the same or like business for any purpose whatever, and the formation of combinations, or common understanding between two or more persons, companies, partnerships, associations, or corporations, in the nature of what are commonly called trusts, for any purpose whatever, or the continuance of the same after the taking effect of this act, are hereby prohibited and declared to be unlawful : Neb.

In case any person, persons, company, partnership, association, or corporation shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, such person, etc. shall be liable to the person, persons, partnership, company, association, or corporation injured thereby for the full amount of damages sustained in consequence of any such violations of the provisions of this act, together with a reasonable counsel or attorney fee : Neb.

Any association of persons doing business in this state in a firm, partnership, or corporate name, and not incorporated under the laws of this state, who shall violate the provisions of this act, in addition to the other penalties and liabilities herein provided, shall forfeit its right to do business in such firm, partnership, or corporate name ; and if any such person shall thereafter continue to do business in such firm, partnership, or corporate name, they shall incur the penalties provided herein : Neb.

Any corporation violating any of the provisions of this act, in addition to the other penalties and liabilities herein provided, shall surrender and forfeit its right and privileges as a corporation : Neb. 1889,69.

Each day of the continuance of any such pool or trusts shall constitute a separate offence : Neb. 1889,69 ; Miss. ib. 3.

A trust is an arrangement, understanding, or agreement, either private or public, entered into by two or more persons or corporations for the purpose of increasing or reducing the price of the shares of stock of any company or corporation, or of any class of products, materials, or manufactured articles, beyond the price that would be fixed by the natural demand for or the supply of such shares, products, materials, or manufactured articles ; and any attempt to carry out such purpose shall be evidence that such arrangement, understanding, or agreement exists : N.C. 1889,374.

Any person, company, or corporation who shall form, or attempt to form, a trust in this state, or the agent or representative of any trust in any state or county who shall attempt to carry on operations in this state, shall be guilty of a misdemeanor, and upon conviction may be fined not more than ten thousand dollars, or may be imprisoned not more than ten years for each offence : N.C.

Any persons, company, or corporation, who enter into an arrangement, understanding, or agreement not to mine, manufacture, buy, sell, or transport more than a certain specified amount of any goods, products, or commodities within a specified time, will have violated this act, and will be liable to indictment therefor ; and any persons, company, or corporation, who give bond or make a forfeit of any kind not to break such arrangement, understanding, or agreement, shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both : N.C.

Any merchant, broker, manufacturer, or dealer in raw materials of any kind, or the agent of such persons, who shall sell any particular class of goods, raw materials, or manufactured articles for less than actual cost for the purpose of breaking down competitors, shall be guilty of a misdemeanor, and upon conviction may be fined or imprisoned, or both, in the discretion of the court : provided that nothing contained in this act shall operate or be construed so as to forbid or prevent any person or persons, who desire and intend to purchase any article or commodity for his or their own use or consumption, from combining or otherwise lawfully acting so as to protect or help themselves from imposition in the cost or purchase price of such articles or commodities as they or either of them may design and intend to use or consume : N.C.

All combinations and trusts as defined by this act are unlawful, dangerous to the liberty of the people, and are hereby forbidden to be formed or carried on in this state : N.C.

It shall not be lawful for any person or persons, or associations of persons, or any corporation in this state, or doing business in this state, to form, or agree to, or to conspire to form any trust, pool, or corner or combination, or any other arrangement or device, in or about any article of legitimate traffic, the production or manufacture or sale of such article, that may injuriously affect, and for the purpose of injuriously affecting, the legitimate trade and commerce of the country, or to limit the supply or production of said articles, whereby the price of such produce or manufactured articles, or other articles of legitimate trade, may be unduly depressed and put down, or unduly raised or increased, for the purpose of speculation, either by pooling or purchasing said articles for the purpose of withdrawing them from market to destroy legitimate competition, or to create a monopoly or corner in the same, or to produce an undue demand for the same, and that to unduly raise the price of said articles, or by throwing the same on the market when so accumulated or purchased for the purpose of creating an undue depression in the price of such article, and by such means to destroy or limit legitimate competition in the production, manufacture, or sale of such articles, as by any other device or arrangement for such purpose. All such agreements, trusts, pools, corners, and combinations are hereby prohibited : provided nothing herein contained shall be construed to prevent or interfere with parties engaged in legitimate trade and speculation : Tenn. 1889,250.

A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or of either two or more of them, for either, any, or all of the following purposes : first, to create or carry out restrictions in trade ; second, to limit or reduce the production, or increase or reduce the price, of merchandise or commodities ; third, to prevent competition in manufacture, making, transportation, sale, or purchase of merchandise, produce, or commodities ; fourth, to fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this state ; fifth, to make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have

bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected : Tex. 4847a,1, Miss. 1890,36,1.

Any combination between individuals, corporations, associations, or either, having for its object or effect the controlling of the price of any product of the soil, or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited, and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended, in this state, whenever the owner or owners thereof violate this article, shall be deemed annulled, and become void : N.D. Const. 7,146.

Any combination, agreement, or trust made, entered into, or formed between persons, copartnerships, or corporations in this state, or by and between any persons, copartnerships, or corporations within this state with any person, copartnership, or corporations without this state, with intent and which shall in any manner tend to prevent a free, fair, and full competition in the production, manufacture, or sale of any article or commodity of domestic growth, use, or manufacture, or that tends to advance the price to the user or consumer of any article or commodity of domestic growth, use, production, or manufacture beyond the reasonable cost of production or manufacture thereof, or that tends to advance the price to the user, purchaser, or consumer of farm machinery, implements, tools, supplies and lumber, wood and coal, imported into this state from any other state, territory, or country, beyond the reasonable cost of production and sale or manufacture and sale of the same, or which tends to and does induce and accomplish a sale of wheat, corn, oats, barley, flax, cattle, sheep, hogs, or other farm or agricultural products, for less than such farm or agricultural products are really worth at the time of sale, or for a less price than such farm or agricultural products would sell for in open market if such combination, agreement, or trust did not exist, or tend to, or shall increase, enhance, or maintain rates of interest on loans of money, for the forbearance of the payment of any sum of money, or debt, or to prevent a fair competition for a low rate of interest on loans, or for the forbearance of the payment of any debt or obligation, is hereby declared to be against public policy, and unlawful and void : S.D. 1890,154,1.

Every contract or combination between individuals, associations, or corporations, having for its object or which shall operate to restrict trade or commerce, or control the quantity, price, or exchange of any article of manufacture or product of the soil or mine, is hereby declared to be illegal : N.M. 1891,10,1.

Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce of this [state] territory, shall be deemed guilty of a misdemeanor : La. 1890,86,3 ; N.M. 1891,10,2.

It shall not be lawful for any corporation organized under the laws of this territory, or organized under the laws of any other territory or state, and doing business in this territory, to enter into any combination, contract, trust, pool, or agreement with any other corporation or corporations, or with any individual firm, partnership, or association of persons whatsoever, for the purpose of regulating or fixing the price of, or preventing or restricting competition in the sale of provisions, feed, fuel, lumber, or other building materials, articles of merchandise, or other commodity, including the

fixing of the rate of interest. [Any] president, manager, director, agent, receiver, or other officer of any such corporation, violating the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than five hundred dollars for the first offence, and upon a second conviction shall be fined a sum equal to twice the amount of the first fine : Oka. 6620.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal : U.S. 1890,647,1.

**§ 9901. Penalties, etc.** It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the attorney-general, to enforce the foregoing provisions of this act : Ill. 1891, p. 208 ; Io. ; Mo. ; Tenn. ; N.D. 1890,174,8 ; Miss. ib. 10.

And any prosecuting attorney, or the attorney-general, securing a conviction under the provisions of this act, shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, (1) to one fifth of the fine recovered : Ill. ; Io. 1890, 28,8 ; Mo. 7326 ; Oka. 6623.

(2) To half of it : Tenn. 1889,250,2.

And any person or persons who shall be a party to any such unlawful combination, agreement, or trust, or who shall in any way assist, aid, or abet any such combination, agreement, or trust, either as principal, agent, attorney, employee, or otherwise, shall be deemed guilty of a felony : Tenn. 1891,218,2 ; S.D. 1890,154,1.

And all persons or stockholders in corporations so doing are liable as partners jointly and severally for the debts of all persons connected therewith : Tenn. ib. 3.

Any person or persons who shall agree and undertake, as agent, to sell, and shall sell in this state, any of the articles, commodities, products, or machinery, implements, tools, supplies or goods, wares and merchandise, mentioned in section one of this act, for a non-resident manufacturer of or wholesale dealer in such articles, commodities, products, machinery, implements, tools, supplies or goods, wares and merchandise, while at the same time such non-resident manufacturer or wholesale dealer refuses to sell at wholesale or manufacturers' prices such farm implements, tools, or supplies as are furnished to such agent for sale in this state to responsible and reputable wholesale dealers in this state, shall be deemed to have unlawfully combined and agreed, within the meaning of section one of this act, with such non-resident manufacturer or wholesale dealer, with intent to prevent a full, free, and fair competition in the sale in this state of any such farm machinery, implements, tools, or supplies furnished to such agent as aforesaid, and refused to be sold to wholesale or retail dealers in this state as aforesaid, and with intent to advance the price to the user and purchaser and consumer beyond the reasonable cost of manufacture and sale, or production and sale of such farm machinery, farm tools, farm implements and supplies refused to be sold as aforesaid to dealers in this state as aforesaid, and such agent or agents upon conviction thereof shall be punished by a fine of not more than one thousand dollars or an imprisonment in the state's prison not more than five years, or both : S.D. 1890,154,2.

Any non-resident corporation, copartnership, or company, or person, who shall ship or bring into this state for sale any of the commodities, products, or goods, wares, or merchandise, machinery, tools, or implements mentioned in section one of this act, to be sold only and exclusively by an agent or agents, or person or persons selected, appointed, and controlled in the sale of such goods by such non-resident corporation, copartnership, company, or person, in violation of the spirit, intent, and purpose of this act, may be restrained by an order of injunction from any court of competent jurisdiction in this state from selling or disposing of any such commodities, products, goods, wares, or merchandise, machinery, tools, or implements, or having the same sold in this state until the defendant in such order offer the same for sale, or to be sold, on

like and regular terms, and without restrictions except price and terms of payment, to reputable and responsible wholesale or retail dealers of this state, without regard to location, who may desire to purchase the same or any portion thereof for sale again : S.D. 1890,154,3.

It is hereby made the special duty of each and every state's attorney of each and every county in this state, who shall have good reason to believe that any of the provisions of section one of this act are being violated by any person or persons in this county, or upon affidavit of two or more reputable persons made and delivered to him showing or stating affirmatively that any person or persons in this county have violated any of the provisions of section one of this act, to make complaint and cause the arrest of such person or persons, and to prosecute him or them diligently to conviction, if proved to be guilty, and also at the request of any citizen of his county, and for good cause shown, apply for an injunctive or restraining order as provided in this act : Provided that the provisions of this section shall not be construed to prevent any person from making complaint to any court of competent jurisdiction for any violation of the provisions of this act, and in such case the court shall issue a warrant, and proceed the same as though the state's attorney had made the complaint : S.D. 1890,154,4.

Any person entering into any such arrangement, etc., or who shall attempt to carry out or act under any such arrangement, etc., either on his own account or as agent or attorney for another, or as an officer, agent, or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor : Kan. 1889,257,1 ; N.M. 1891,10,2.

Any person or corporation injured or damaged by any such arrangement, etc., may sue for and recover in any court the full consideration or sum paid by him for any goods, wares, merchandise, and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed. When an action shall be commenced in any court it shall be lawful in the defence thereof to plead in bar or in abatement that the plaintiff or any other person interested in the prosecution of the case is a member or agent of an unlawful combination as described in sections one or two of this act, or that the cause of action grows out of such combination, or out of some business or transaction thereof. The purchase, sale, or manufacture of any goods, wares, merchandise, or other commodities in this state by any person or corporation who has entered into any such arrangements, contracts, agreements, trusts, or combinations in any other state or territory, as above described, or by any agent or attorney for such person, or as an agent, officer, or stockbroker of any such corporation, as a trustee, committee, or in any capacity whatever, shall constitute a violation of this act, and shall subject the offender to the aforesaid liabilities and penalties : Kan. 1889,257,1-6.

It shall be the duty of the secretary of state, upon satisfactory evidence that any company or association of persons duly incorporated and operating under the laws of this state have entered into any trust, combination, or association, as provided in the preceding provisions of this act, to give notice to such corporation that unless they withdraw from and sever all business connection with said trust, combination, or association their charter will be revoked at the expiration of thirty days : Io. 1890,28,7 ; Mo. 7325 ; 1891, p. 188,8 ; N.D. ib. 7.

And it shall be the duty of the secretary of state, after the passage of this act, to address to the president, secretary, or treasurer of each incorporated company doing business in this state a letter of inquiry as to whether the said corporation has merged all or any part of its business or interest in or with any trust, combination, or association of persons or stockholders as named in the preceding provisions of this act, and to require an answer, under oath, of the president,



secretary, treasurer, or any director of said company: Io. 1890,28,6; Mo. 7324; 1891, p. 187,7; N.D. ib. 6.

All officers and agents of such corporation or copartnership shall be competent witnesses against the defendant on trial, and such officers and agents may be compelled to testify against such defendant, and produce all books and papers in their custody or control pertinent to the issue, and shall not be excused from answering any such question, or from producing any books and papers because the same might tend to criminate such witness; but nothing which such witness shall testify to, and no books or papers produced by him, shall in any manner be used against him in any suit, civil or criminal, to which he is a party: Minn. 1891,10; Tenn. 1891,218,7; Oka. 6621,6622.

In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for it in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all: Tex. 4847a,8; Miss. 1890,36,5. The character of the trust or combination alleged may be established by proof of its general reputation as such: Tex.

Any person, partnership, company, association, or corporation subject to the provisions of this act who shall violate § 9900 shall be declared guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars: Neb. 1889,69.

Two hundred and fifty dollars for first offence, five hundred dollars for second: Tenn. 1889,250,2.

Five thousand dollars, and by imprisonment not exceeding one year: U.S. 1890, 647,1.

Any person who shall have purchased from any individual, firm, partnership, or corporation, doing business in violation of the provisions of this act, any provisions, feed, fuel, lumber or other building material, articles of merchandise, or other commodity, and paid for the same, may maintain a civil action to recover the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable attorney's fee: Oka. 6622.

Any violation of either or all the provisions of this act shall be and is hereby declared a conspiracy against trade, punished by fine not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years: Tex. 4847a,6; Miss. 1890,36,2.

Each and every firm, person, corporation, or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violation shall be committed or continued forfeit and pay the sum of fifty dollars: Tex. 4847a,10; Miss. ib. 7.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty under this act: U.S. 1890,647,2.

Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor: U.S. 1890,647,3.

The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations: U.S. 1890,647,4.

Any property owned under any contract, or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one state to another, or to a foreign country,

shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law : U.S. 1890,647,6.

Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit : U.S. 1890,647,7.

So, double damages : Tenn. 1891,218,6.

**§ 9902. Contracts Void, etc.** Any contract or agreement in violation of any provisions of the preceding sections of this act shall be absolutely void: Ill. 1891, p. 208 ; Io. 1890,28,4 ; Ky. 1890,1621,4 ; Tenn. ib. 3 ; Mo. 7322 ; Tex. ib. 11 ; N.D. 1890,174 ; Miss. 1890,36,8 ; La. 1890,86,1 ; N.M. 1891,10,3.

And the connection of the plaintiff with such trust may be pleaded in bar of any action growing out of the same : Tenn. 1891,218,5.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce within the limits of this state shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year: La. 1890,86,3.

Every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal : U.S. 1890,647,3.

Any purchaser of any article or commodity from any individual company or corporation transacting business contrary to any provisions of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment: Ill. 1891, p. 208 ; Io. 1890,28,5 ; Ky. ib. 4 ; Mo. 7323 ; 1891, p. 187,5 ; N.D. ib. 5 ; N.M. ; Oka. 6621.

**§ 9903. Corporations.** It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract, or agreement shall be to place the management or control of such combination or combinations, or of the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article : Ill. 1891, p. 207 ; Io. 1890,28,2 ; Ky. 1890,1621 ; Mo. 7320 ; 1891, p. 186, § 2 ; N.D. 1890,174,2.

Any corporation created or organized by or under the law of this state which shall violate any provision of the preceding sections of this act shall thereby forfeit its corporate right and franchises: Io. 1890,28,6 ; Ky. ib. 6 ; Tenn. 1889, 250,4 ; 1891,218,4 ; Mo. 7324 ; 1891, p. 187,6 ; Tex. 1889, p. 141 ; N.D. 1890, 134,6 ; Miss. ib. 9 ; Oka. 6620.

**Provisions of the States in Detail.** It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining, or mining any article or product which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated companies, or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, corporations, companies, or associations which may have or which may propose to form a trust, combination, or association inconsistent with the provisions of this section and contrary to public policy : Me. 1889,266,1.

No certificate of stock, or other evidence of interest, in any trust, combination, or association, as named in section one of this act, shall have legal recognition in any court in this state, and any deed to real estate given by any person, firm, or corporation for the purpose of becoming interested in such trust, combination, or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void : Me. 1889,266,2.

Incorporated companies, firms, or associations, entering into such trust, etc., are guilty of a misdemeanor . Me. 1889,266,3.

It is made the duty of the secretary of state to forward a copy of this act to every such company, with a letter of inquiry as to whether it has merged all or any part of its business or interests in any trust, combination, or association of persons or stockholders as named in section one, and to require an answer under oath thereupon. Upon failure to answer, the corporation may be dissolved : Me. 1889,266,4.

It shall not be lawful for any corporation chartered under the laws of Alabama, or for any officer, stockholder, agent, or employee of such corporation, to enter into any combination with other persons or corporations, the purpose and effect of which are to place the management or control thereof in the hands of others with the purpose or intent to limit or fix the price or lessen the production or sale of any article of commerce, use, or consumption, or to restrict or diminish the manufacture of such article : Ala. 1891,202,2.

Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this state : Tex. 4847a,4 ; Miss. ib. 11.

Persons out of the state may commit and be liable to indictment and conviction for committing any of the offences enumerated in this act which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons offending against its provisions, whether within or without the state : Tex. 4847a,9 ; Miss. ib. 6.

It shall be the duty of the secretary of this state, on the application of persons for a charter to establish any corporation, to require two applicants therefor to make oath or affirmation that such corporation is not being formed for the purpose of enabling several corporations to avoid the provisions of this act, and if such oath or affirmation is not satisfactory, the secretary is authorized to withhold such charter : S.D. 1890, 154,5.

That the word "person" or "persons," wherever used in this act, shall be deemed to include corporations : U.S. 1890,647,8.

**§ 9904. Exceptions to Statute.** The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser : Tex. 4847a,13 ; Ala. 1891,202,3 ; Miss. ib. 13. "Provided he does not combine or confederate with others thus to raise or lower prices." Ala.

"Nor to any persons holding in their own hands as the owners thereof, or in the

hands of agents of such owners, any and all raw materials of every character which are the growth, result, or product of the property of the labor, skill, or industry of any other such persons : " Miss.

Nothing herein contained shall prevent any assemblies or associations of laboring men from passing and adopting such regulations as they may think proper in reference to wages and the compensation of labor, and such assemblies and associations shall retain, and there is hereby reserved to them, all the rights and privileges now accorded to them by law, anything herein contained to the contrary notwithstanding : Neb. 1889,69,8.

The penalties and forfeitures herein provided shall be held to be cumulative of each other and of all other laws in any way affecting such trusts or combinations now or hereafter in force in this state : Miss. 1890,36,12.

For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney-general or any district attorney, upon his own motion, and without leave or order of any court or judge, to institute suit by *quo warranto* proceedings in any county in the state where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter, rights, and franchise, and the dissolution of its corporate existence : Miss. 1890,36,10.

§ 9905. **Trusts in Special Commodities.** It is unlawful for any two or more persons or corporations, engaged in the business of buying or selling live stock for others on commission, to enter into any combination to fix or control the charges or commissions received for their services, or in any respect to prevent full and free competition in such business, or which seeks to maintain any sum as a minimum commission for such services, under penalty of fine and imprisonment : Kan. 1891,158.

It shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association, to enter into any agreement, contract, or combination with any other grain dealer or grain dealers, partnership, company, corporation, or association for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association shall pay for grain, hogs, cattle, or stock of any kind or nature whatever ; and each day of its continuance shall be deemed a separate offence : Neb. 1887,114,1 ; N.D. 1890,173,1.

Any grain dealer shall be liable to the person or persons injured thereby to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fees : Neb. ib.2 ; N.D. ib. 2.

And also for a misdemeanor, with penalty of fine of one thousand dollars or six months' imprisonment : N.D. ib. 3.

## ADDENDA AND ERRATA.

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### NEW YORK.

THE New York corporation law was much amended by chapters 687, 688, and 691 of the laws of 1892. These statutes have not yet been published officially, but are of such extreme importance that the changes they make are noted here. As a general rule, they are much more liberal than the general corporation statutes of 1890, incorporated before in the text of this work.

#### CHAPTER 563, 1890.

§ 1. Unchanged by statute of 1892, ch. 687.

§ 2. Classification of corporations. A corporation shall be either, —

1. A municipal corporation,
2. A stock corporation,
3. A non-stock corporation, or
4. A mixed corporation.

A stock corporation shall be either, —

1. A moneyed corporation,
2. A transportation corporation, or
3. A business corporation.

A non-stock corporation shall be either, —

1. A religious corporation, or
2. A membership corporation.

A mixed corporation shall be either, —

1. A cemetery corporation,
2. A library corporation,
3. A co-operative corporation,
4. A board of trade corporation, or
5. An agricultural and horticultural corporation.

A transportation corporation shall be either,

1. A railroad corporation, or
2. A transportation corporation other than a railroad corporation.

A membership corporation shall include benevolent orders and fire and soldiers' monument corporations.

"A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class:" N.Y. 1892, 687, 2. (See § 8007.)

§ 3. Certain definitions are added, as for instance: —

"A stock corporation is a corporation having capital stock divided into shares.

"A mixed corporation is a corporation which may or may not have capital stock at its option.

"A moneyed corporation is a corporation formed under or subject to the banking or the insurance law.

"The term, member of a corporation, shall include every person having a right to vote at a meeting of the corporation for the election of directors other than a person having a right to vote only upon a proxy.

"The term, office of a corporation, means its principal office within the State, or principal place of business within the State if it has no principal office therein. The office of a stock corporation shall be in the county, town, or city in which its business is principally carried on.

"The term, business of a corporation, when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

"The term, corporate law or laws, when used in any law forming a part of the revision of the general laws of the State of which this chapter is a part, means the general laws of the State relating to corporations included in such revision:" 1892, 687, 3. (See § 8007.)

"§ 4. *Qualification of incorporators.* — A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two thirds of them must be citizens of the United States, and a majority of them residents of this State.

"This section shall not apply to a corporation formed by the re-incorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise : " 1892,687,4. (See § 8021.)

This is a new section,

§ 5. The old law is amended by requiring the certificate of incorporation to be filed with the secretary of state, and a copy with the county clerk. (See § 8024.)

§ 4 of the old law, § 6 of the new. Provisions substantially unchanged. (See § 8011.)

§ 5 of old law, § 7 of new. The provisions authorizing the officers of a corporation to file an amended certificate when the original one is defective are much extended, and power is given to the supreme court to make such amended or supplementary certificate upon due cause shown and notice to the attorney-general : 1892,687,7. (See § 8090.)

§ 6 of old law, § 8 of new. Practically unchanged.

§ 7 of old law, § 9 of new. Unchanged.

"§ 10. *Prohibition of other than statutory powers.* — No corporation shall possess or exercise any corporate powers not expressly given by law or not necessary to the exercise of the powers so given : " 1892,687,10. (See §§ 8212, 8215.)

This section was not in the statute of 1890, but in the revised statutes.

§ 8 of old law, § 11 of new. The words "not exceeding the amount limited by law" are changed in the new statute to "subject to such limitations as may be prescribed by law," — both phrases applying to the power of a corporation to hold real estate such as its purposes shall require. Further power is given by the new statute as follows : "Such by-laws may also fix the amount of stock which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law." (See §§ 8056, 8204.)

"§ 12. *Limitations of amount of property of a non-stock corporation.* — A corporation not having capital stock may take and hold property not exceeding in value three million dollars, or the yearly income derived from which shall not exceed five hundred thousand dollars, notwithstanding the provisions of any general or special act heretofore passed, or certificate of incorporation affecting such corporation.

"In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account : " 1892,687,12.

§ 10 in the old law, § 13 in the new. Substantially unchanged.

§ 11 in the old law, § 14 in the new. Substantially unchanged.

"§ 15. *Certificate of authority of a foreign corporation.* — No foreign stock corporation, other than a moneyed corporation, shall do business in this state without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or, if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of state shall deliver such certificate to every such corporation so complying with the requirements of law. No such corporation now doing business in this state shall do business herein after December 31, 1892, without having procured such certificate from the secretary of state, but any lawful contract previously made by the corporation may be performed and enforced within the state subsequent to such date.

"No foreign stock corporation doing business in this state without such certificate shall maintain any action in this state, upon any contract made by it in this state, until it shall have procured such certificate : " 1882,687,15. (See § 8402.)

"§ 16. *Proof to be filed before granting certificate.* — Before granting such certificate the secretary of state shall require every such foreign corporation to file in his office a sworn copy of its charter or certificate of incorporation, and a statement under its corporate seal, particularly setting forth the business, or objects of the corporation which it is engaged in carrying on, or which it proposes to carry on within the state, and a place within the state which is to be its principal place of business, and designating, in the manner prescribed in the Code of Civil Procedure, a person upon whom process against the corporation may be served within the state.

"The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state. Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state.

"If the person so designated dies, or removes from the place where the corporation has its principal place of business within the state, and the corporation does not within thirty days after such death or removal designate in like manner another person upon whom process against it may be served within the state, the secretary of state may revoke the authority of the corporation to do business within the

state, and process against the corporation in an action upon any liability incurred within this state before such revocation may, after such death or removal and before another designation is made, be served upon the secretary of state. At the time of such service the plaintiff shall pay to the secretary of state two dollars, to be included in his taxable costs and disbursements, and the secretary of state shall forthwith mail a copy of such notice to such corporation, if its address, or the address of any officer thereof, is known to him : " 1892,687,16. (See §§ 8402, 8403.)

§ 12 in the old law, § 17 in the new. The right to hold real estate within the state of New York is now limited to foreign corporations of the United States, or of any state or territory, but not alien corporations. (See § 8405.)

§ 13 in the old law, § 18 in the new. Substantially unchanged.

§ 14 of the old law, § 19 of the new. Substantially unchanged, except that instead of the word "moneyed corporation" is now used the term "corporations under or subject to the banking laws," and the words "carrying on the business" are inserted for the words "of discounting bills, notes, etc." (See § 8218.)

§ 20 of new law. This appears to supersede § 54 of chapter 564 of the laws of 1890, and changes are made as follows. Stock need now be held only ten days before the election to entitle the holder to a vote, and the same rule applies to the issuing of proxies. Pledgors of stock are given the right to vote on stock standing in their name, and provision is made for cumulative voting as in other states. (See § 8054.) That is, the certificate of incorporation of any stock corporation may provide that each stockholder shall be entitled to as many votes as shall equal the number of his shares multiplied by the number of directors to be elected, and may cast all of such votes for one director, or distribute them in any other way : 1892,687,20.

§ 21. A new statute authorizes voting by proxy, except in religious corporations, but provides that no officer or clerk of a banking corporation shall act as proxy for any stockholder at any meeting. The other provisions concerning proxies in § 54 of chapter 564 of the acts of 1890 are retained. (See § 8057.)

§ 22 of the new statute makes more elaborate provision for oath to be taken by persons claiming the right to vote at meetings of corporations either directly or as proxy, and gives the forms thereof, and they are substantially unchanged from those given in § 54 of chapter 564 of the laws of 1890. (See § 8057.)

§ 18 of the old law (1890,563) is substantially preserved in § 23 of the act of 1892, chapter 687, except that the express statement that the election may be held on any other day when a meeting is duly called is omitted. (See § 8051, and the next section.)

§ 24 of the new law. This replaces § 53 of chapter 564 of the acts of 1890, and is as follows :—

"§ 24. Mode of calling special election of directors.—If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.

"If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held, and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting." (See § 8051.)

§§ 25 and 26 of the new law substantially re-enacts that part of § 53, chapter 564, laws of 1890, that is not covered by § 24 above. (See § 8051.)

§ 15 of the old law is substantially re-enacted by § 27 of the new law.

§ 16 of the old law is substantially re-enacted by § 28 of the new law.

§ 17 is substantially re-enacted by § 29, with the following clause added :—

"The affairs of every corporation shall be managed by its board of directors, at least two of whom shall be residents of this state. Subject to the by-laws, if any, adopted by the members of a corporation, the directors may make necessary by-laws of the corporation." (See §§ 8042, 8060, 8073.)

§§ 19 and 20 are re-enacted by § 30 of the new law.

§ 21 has been amended by § 31 so that a corporation must undertake its corporate duties within two years from the date of its incorporation in order to save its powers. (See § 8036.)

§ 22 is completely re-enacted and much enlarged by § 32 of the new law, providing that, if the term of existence of any domestic corporation have expired, and it be made to appear to the supreme court that it was legally organized, and through mistake it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate for the expiration of its corporate existence, which bonds are unmaturing and unpaid, the court may order the filing of a certificate reviving the corporation and extending it for a term not exceeding the term for which it was originally incorporated ; and further providing that every corporation extending its corporate existence under this chapter, or

any general law, shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provision in its charter, and shall thereafter be deemed to be incorporated under the general laws of the state relating to such corporations, and subject to the provisions of such laws. (See § 8013.)

§ 33. "Conflicting corporate laws. — If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter, or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter, or of the stock corporation law with which it conflicts shall not apply in such case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter, or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall in such case be applicable." 1892,687,33.

This section is a new provision.

§ 23 of the old law is re-enacted unchanged in § 24 of the new.

§ 24 of the old law is substantially unchanged by § 35 of the new.

§ 25 of the old law is substantially re-enacted by § 36 of the new. And nothing in this act is to impair any right or liability which an existing corporation, its officers, directors, stockholders, or creditors, may have, or be subject to.

## CHAPTER 564 of 1890.

§ 1. *Short title and application of chapter.* — "This chapter shall be known as the stock corporation law, but article one shall not apply to moneyed corporations." 1892,688,1,1.

§ 2. This is amended by § 2 of the law of 1892, so that the written consent of two thirds of the stockholders — necessary to make valid a mortgage by the corporation — need no longer be acknowledged by them. (See § 8208,3d paragraph. It appears that the statute of 1888,394, therefore, is not repealed. — See also 2d paragraph on page 132 of this book.)

Such consent may also be given by vote of a special meeting of the stockholders called for that purpose, and a certificate of such vote signed and sworn to by the secretary shall be filed and recorded as aforesaid: 1892,688,1,2.

§ 3. The title of the section is changed in the new statute to "Reorganization upon sale of corporate property and franchises." This section is otherwise unchanged.

§ 4. This section is unchanged by § 4 of the act of 1892.

§ 5. This section is unchanged by § 5 of the act of 1892.

§ 6. The words "at par" are stricken out in this section, relating to the reorganization of companies, and the acceptance of stock in the new company by stockholders ("at par" formerly) in the previous company. (See § 8370, page 196 of this book.)

§ 7. *Companies prohibited.* This section is amended as follows: "No stock corporation shall combine with any other corporation or person for the creation of a monopoly, or the unlawful restraint of trade, or for the prevention of competition in any necessary of life." 1892,688,7. (See § 8252 of this book.)

Article II. § 20. In the new statute this section does not require the directors to be elected annually, but only one fourth in number need be elected annually, and a majority of them need no longer be citizens of the state. (See §§ 8043,8045.) The time and place of the election are fixed by the by-laws as before, but by the plurality of the votes of the stockholders voting at such election. Notice of an election of directors may now be given by publication for two weeks only. (See § 8050.) Policy holders of an insurance corporation are eligible to election as directors.

§ 21. The title of this section is altered to "Change of number of directors," and the following is added: "If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and, if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors." (See § 8093.)

§ 22. Unchanged by the statute of 1892.

§ 23. The title is changed to "Liability of directors when making unauthorized dividends." The provision in regard to impairment of stock is omitted, and also the prohibition of dividends declared, which will have the effect of impairing the capital stock, and also the prohibition of dividends of any part of the corporate property and assets so as to reduce the value thereof after deducting the amount of its debts below the amount of its capital stock. The provision regarding votes upon such dividends to be taken by ayes and noes, to be entered and recorded on the minutes, is also omitted, and directors transgressing such provisions of law are now liable only to the amount of the capital stock so divided or withdrawn, and not absolutely for all the debts of the corporation, as before; and this section does not prevent a dividend upon dissolution of the corporation. (See §§ 8160,8161.) The new section in full is as follows: —

"*Liability of directors for making unauthorized dividends.* — The directors of a stock corporation shall not make dividends except from the surplus profits arising from the business of such corporation; nor



divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of the capital of such corporation so divided, withdrawn, paid out, or reduced. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter."

§ 24. *Liability of directors for unauthorized debts and overissue of bonds.* — Moneyed corporations are excepted from the provisions of this section, but otherwise its effect is unchanged. (See § 8207.)

§ 25. *Liability of directors for loans to stockholders.* — Moneyed corporations are excepted from the provisions of this section, but otherwise it appears to be unchanged. (See §§ 8114, 8147.)

§ 26. *Transfers of stock by stockholder indebted to corporation.* — Unchanged.

§ 27. *Officers.* — The secretary and treasurer no longer have to be stockholders. (See § 8045.) The policy holders of an insurance company are eligible as officers, otherwise the section appears unchanged in effect.

§ 28. *Inspectors and their oath.* — No director or officer of a moneyed corporation is now eligible to election or appointment as inspector of elections, and the inspectors are entitled to a reasonable compensation for their services. (See § 8053.)

§ 29. *Books to be kept.* — The stock-books are no longer required to show the names of all those who have been stockholders "within six years," and the word "actually" is stricken out of the clause "the amount actually paid thereon." Stock-books are now required to be kept open to the inspection of judgment creditors only, not simple creditors. (See § 8156.) Otherwise the section appears to be unchanged.

§ 30. *Annual report.* — Moneyed corporations are also excepted from the provisions of this statute, and the report may be filed any time in January, or, in the case of corporations doing business without the United States, any time before the first of May. It need no longer show the proportion of the capital stock actually paid in, but only the amount of the capital stock, and the proportion actually issued. The nature of the debts need no longer be shown, nor the receipts and expenditures of the corporation during the year, nor the names of its stockholders, nor the dividends declared since the last report. (See § 8080.)

§ 31. The title is changed to read as follows: "Liability of officers for false certificates, reports, or public notices." If any false certificate or report is given, the officers are no longer liable for all the debts of the company, but only will "jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice, or any material representation therein, to the amount of the debt contracted upon the faith thereof if not paid when due, or of the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report, or notice, or of any material representation therein, shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder, and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report, or public notice shall have been made or given by the officers or directors of such corporation." See § 8235.

§ 32. (New section.) "*Alteration or extension of business.* — Any stock corporation heretofore or hereafter organized under any general or special law of this state may extend or alter its business and powers so as to include any purposes and powers which at the time of such extension may have been conferred by law upon corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by a majority of its directors, stating the extension of business and powers and rights proposed, and that the same has been duly authorized by a vote of stockholders representing at least three fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in § 45 of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate."

Article III. § 40. The provision declaring stock personal property is omitted from the new statute. Stock certificates may be signed by the vice-president in lieu of the president, and by the secretary in lieu of the treasurer. The provision forbidding a corporation to use its funds in the purchase of stock in its own or any other corporation is omitted, and the new provision reads: —

"Any stock corporation, domestic or foreign, now existing or hereafter organized, except moneyed corporations, may purchase, acquire, hold, and dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds,

or other obligations, if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held, or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use, or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product, or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein, and the corporation holding such stock shall possess and exercise in respect thereof all the rights, powers, and privileges of individual owners or holders of such stock.

"Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting, and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business."

§ 41. This section is unchanged, except that the words "whose subscription is payable in money" are inserted after the word "subscriber." That is, only subscribers whose subscription is payable in money shall pay to the directors ten per cent in cash upon subscription.

§ 42. This provision is substantially unchanged, except that a new clause is added, "No such stock shall be issued for less than its par value," and it now reads as follows:—

"No corporation shall issue either stock or bonds, except for money, labor done, or property actually received for the use and lawful purposes of such corporation. No such stock shall be issued for less than its par value."

"No such bonds shall be issued for less than the fair market value thereof."

§ 43. A new paragraph is added: "Such stock, if forfeited, may be reissued, or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value, or subscribed for within six months after such forfeiture, it shall be cancelled and deducted from the amount of the capital stock. If by such cancellation the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter, or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such instalments as the receiver or the court may direct."

§ 44. A new clause is added, that stock may not be increased or decreased "above the maximum or below the minimum amount, if any, prescribed by law." And an exception is made of insurance companies, in which case "the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets."

§ 45. Unchanged, except that two weeks' notice of a meeting to increase or reduce stock is now required instead of three.

§ 46. An additional provision to this section is now made, in the case of moneyed corporations, that the approval of the superintendent of banks is required, if it be a banking corporation, or the superintendent of insurance, if an insurance corporation.

§ 47. The new section confers the privilege of issuing preferred stock, if the certificate of incorporation so provides, or if the unanimous consent of the stockholders be given. The new section in full is as follows:—

*"Preferred and common stock.*—Every domestic stock corporation may have preferred and common stock, and different classes of preferred stock, if the certificate of incorporation so provides, or by the unanimous consent of the stockholders, and may, upon the written request of the holder of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, share for share, or upon such other valuation as may have been agreed upon in the scheme for the organization of such corporation, or the issue of such preferred stock, but the total amount of such capital stock shall not be increased thereby." This should be added to § 8130 of this book.

§ 48. This provision has been much enlarged, a penalty imposed upon officers or directors violating it, and special provisions inserted as to banking corporations. The full section reads as follows:—

*"Prohibited transfers to officers or stockholders.*—No corporation which shall have refused to pay any of its notes or other obligations when due, in lawful money of the United States, or any of its officers or directors, shall transfer any of its property to any of its officers, directors, or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment, or transfer of any property of any such

corporation by it or by any officer, director, or stockholder thereof, nor any payment made, judgment suffered, lien created, or security given by it or by any officer, director, or stockholder, when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation, shall be valid.

"Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees.

"No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void.

"No conveyance, assignment, or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars, shall be made by such corporation, or by any officer or director thereof, unless authorized by a previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business, and except payments in specie or other current money, or in bank bills made by such officers. No such conveyance, assignment, or transfer shall be void in the hands of a purchaser for a valuable consideration without notice.

"Every director or officer of a corporation who shall violate, or be concerned in violating, any provision of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be a director or an officer to the full extent of any loss they may respectively sustain by such a violation." (See § 8334.)

§ 49. The title is changed to "Payment by stockholders of mortgaged debt pending foreclosure."

§ 50. *Application to court to order issue of new in place of lost certificate of stock.* — The owner of a lost certificate of stock may apply for a new one to the supreme court at any special term held in his district, or where the company is located, but the section is otherwise unchanged. See § 8157.

§ 51. *Order of court upon such application.* — Unchanged by the law of 1892.

§ 52. *Financial statement to stockholders.* — Stockholders owning five per cent of the stock, or three per cent, if the capital exceed \$100,000, may, except in the case of "moneyed corporations," make a written request to the treasurer, and he is given thirty days to make a report of all assets and liabilities to such persons, and it is also then filed for twelve months for any stockholder to inspect. See § 8081.

§ 53. See laws of 1892, 687, § 24, below.

§ 54. See laws of 1892, chap. 687, § 20, below.

§ 55. This does not appear in the statute of 1892, nor yet in the repeal act as having been repealed.

§ 56. This appears as § 53 of the law of 1892.

§ 57. The liability of the stockholders is now made dependent on the fact of payment of the whole amount of the capital stock issued and outstanding at the time the debt was incurred, and not upon the filing of a certificate of payment, as in § 8110 provided. As this section is so important, it has seemed best to print it in full as follows: —

"*Liabilities of stockholders.* — The stockholders of every stock corporation shall, jointly and severally, be personally liable to its creditors, to an amount equal to the amount of the stock held by them respectively, for every debt of the corporation, until the whole amount of its capital stock issued and outstanding at the time such debt was incurred shall have been fully paid. The stockholders of every stock corporation shall, jointly and severally, be personally liable for all debts due and owing to any of its laborers, servants, or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant, or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services. No person holding stock in any corporation as collateral security, or as executor, administrator, guardian, or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof, and shall be liable as stockholder; and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward, or the person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian, or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder. See §§ 8140–8142.

§ 58. This section appears as § 55 in the statute of 1892, and the title is changed to "Limitation of stockholder's liability," but it is otherwise unchanged.

## VIRGINIA.

A new statute of 1892 creates a railroad commission in this state, and substantially adopts the provisions of the United States Interstate Commerce Law, chap. 104 U. S., 1887, as amended by chap. 128 U. S., 1891; and also adopts the usual provisions concerning the operation of railways found in other states. By this act, sections of the Code of Virginia, 1205, 1206, and 1208-1211 inclusive, 1214, 1224, 1238, 1257, 1310, and 1300 are repealed.

The statute goes on to provide that all railroads shall issue duplicate bills of lading (§ 7), furnish expense bills (§ 8), establish and maintain telegraph offices (§ 9), open ticket offices thirty minutes before the departure of trains (§ 10); and that the railroad commissioner shall make an annual report on the first day of November (§ 11), shall publish annually the statute laws concerning common carriers in the state of Virginia (§ 12), and shall, upon his own motion or upon complaint, investigate, and make order concerning, any infringement of this or other laws by common carriers (§ 14), with right of appeal in the Supreme Court (§ 17); and regulating reduced rates and passes (§ 19): Va. 1892, 614.

## MISSISSIPPI.

The new Code of Mississippi changes the general corporation law in some respects, besides having a much more comprehensive chapter on railroads, and on the railroad commission. The code was adopted too late for incorporation in the body of this work, but it has seemed wise to refer to it here, and indicate the important changes.

Chapter 77 of Mississippi Laws, 1892, which is the same as chapter 20 of the Code of 1892, is the new general corporation law. The law as set forth in the body of this work is changed by it only in the following particulars.

Section 1 of the new law provides for the incorporation of corporations for every lawful purpose, and of every kind, except railroads and insurance companies.

Section 2 of the new law provides that charters granted must not only be recorded with the Secretary of State, but a copy furnished the clerk of the chancery court for the county in which the corporation does business.

Section 5 of the new law provides that the corporation shall have succession for the time limited in its charter, but never exceeding fifty years; and that corporations may borrow money and secure the payment of the same by mortgage or otherwise, and may issue bonds and secure them in the same way.

Section 6 of the new law provides for cumulative voting, as in Pennsylvania, Illinois, and other states, and that the directors shall always be elected in this way, each stockholder having the right to vote for the number of shares of stock owned by him for as many persons as there are directors to be elected; and that no person engaged or interested in a competing business, either individually or as employee or stockholder, shall serve on the board of directors of any corporation without the consent of the majority in interest of the stockholders thereof.

Section 7 of the new law provides that all corporations may hold real and personal estate to the amount of two hundred and fifty thousand dollars, and manufacturing companies and banks to the amount of one million dollars, and that property taken in payment of a debt may be held for five years before it is to be sold.

Section 8 is entirely new, and reads as follows:—

“A mortgage or deed of trust conveying the franchise or income or future earnings of any corporation, no matter when or how such corporation was created, shall not be valid against debts contracted in carrying on the business of the corporation.”

Section 9 is entirely new, and reads as follows:—

“Any corporation doing business in this state shall be liable to a penalty of two hundred and fifty dollars for every unlawful interference with the social, civil, or political rights of any of its agents or employees, and the same may be recovered by suit, to be brought by the injured party.”

Section 10 is entirely new, and reads as follows:—

“It shall be a defence to any suit against a corporation that there was a defect or informality in its organization.”

Section 13 provides for transfer of stock as before, and then adds that “the legal title to stock and beneficial interest therein shall remain in the person appearing to be the owner by the books of the corporation as to creditors until after a *bona fide* transfer has been made on the books.”

Section 14, providing for the sale of corporate franchise under execution, no longer provides that they shall sell to the purchaser bidding the shortest time, but that they shall be sold for cash out and out, there being no such time limit.

Section 19 is entirely new, and reads as follows : —

“A note, obligation, or security of any kind, given or transferred by any subscriber for stock in any corporation, shall not be considered taken, or held as payment of any part of the capital stock of the company.”

Section 20 is entirely new, and reads as follows : —

“A loan of money shall not be made by a corporation to any stockholder therein ; and in case such loan be made, the officers who make it, or assent thereto, shall be jointly and severally liable for the amount thereof, and interest, to creditors whose debts were contracted before the repayment of the money by the borrower ; but banks and building and loan associations may loan money to their stockholders. But a bank of deposit shall not loan a sum greater than one fifth of its capital to any one person or firm.”

Section 21 is entirely new, and reads as follows : —

“No part of the capital stock in any corporation shall be withdrawn, or diverted from its purpose, nor a dividend declared, when the company is insolvent, or would be rendered insolvent by such withdrawal or the payment of such dividend ; and the directors who assented to such withdrawal or declared and paid such dividend, as well as the stockholders who received it, shall be jointly and severally liable to creditors, whose debts then existed, to the extent of such withdrawal or dividend or interest.”

Section 22 is entirely new, and reads as follows : —

“The amount of debts which any manufacturing or trading corporation may contract or owe shall not exceed the amount of its capital stock paid in ; and in case the debts exceed that amount, the directors who contracted such debts shall be individually liable for the excess over the amount of the capital stock, and may be sued therefor by any creditor, whether the debt be due at the time of suit brought or not, if such creditor were without notice or knowledge of the excess at the time his debt was made.”

Section 23 is entirely new, and reads as follows : —

“The provisions of this chapter, when not limited by their terms, shall apply to all corporations whatever where the subject matter is not elsewhere prescribed.”

Section 28 is entirely new, and reads as follows.

“Telegraph companies, for the purpose of constructing new lines, are empowered to exercise the right of eminent domain as provided in the chapter on that subject.”

Chapter 72 of Mississippi Laws, 1892, which is the same as chapter 133 of the Code of 1892, is the new statute concerning the railroad commission. The law as it now stands is changed by it only in the following particulars.

Section 1 of the new law provides for railroad commissioners, one from each supreme court district, to be elected at the general elections every four years, in the same manner as other state officers, and they must possess the qualifications prescribed for the secretary of state.

Section 15 of the new law provides a penalty against any railroad which shall demand and receive more than reasonable compensation for the service rendered in the transportation of passengers or freight, or more than allowed by the tariff rates fixed by the commissioner, and further forbids railroads from charging more for a short haul than for a long one under substantially similar circumstances.

Section 27 is new, and reads as follows : —

“Every bill of lading, or other instrument in the nature or stead thereof, acknowledging the receipt of property for transportation, shall be conclusive evidence in the hands of a *bona fide* holder for value, whether by assignment, pledge, or otherwise, as against the person or corporation issuing the same, that the property had been so received.”

Section 28 is new, and reads as follows : —

“A bank or other person collecting a draft with a bill of lading attached shall retain the money so collected for the space of twenty-four hours after the delivery of the goods.”

Section 29 is new, and reads as follows : —

“If a common carrier receive freight for further transportation and delivery within this state from another carrier on any contract, express or implied, for continuous carriage, and it arrive at the place of delivery in a broken or damaged condition, or some part thereof be lost or destroyed, it is the duty of the last carrier to obtain and furnish to the consignee or other person interested, on demand, true copies of all notations, exceptions, records, and memoranda entered on the books of each carrier touching the receipt, transfers, and handling of the freight while in transit, and if such last carrier shall not so furnish the same, within thirty days after demand, it shall be presumed to have caused such damage, loss, or destruction ; but in case of damage, loss, or destruction of perishable goods, by reason of their nature, and of damage not discoverable by outward inspection, proof thereof shall be admissible.”

Section 59. The railroad commissioners must make report every two years to the legislature, made up from reports by the railroads filed annually, within sixty days after the thirtieth day of June (§ 48).

Chapter 23 of Mississippi Laws, 1892, which is the same as chapter 111 of the Code of 1892, is the new general act governing the incorporation of railroads. It provides (section 24) that persons desiring to organize a railroad company must prepare an application in writing, addressed to the governor, setting forth their names and residences, the terminal points of the railroad, its line within the state, its name, and the time within which it is hoped it will be completed. If the applicants be the purchasers of an old railroad, they must also set forth the facts of their purchase, the date thereof, when and where, and by what proceeding; the name of the former railroad, with its location and the amount of money paid for the property and its real value, and the sum at which it is proposed to capitalize it. Upon receipt of such application, the governor submits it to the attorney-general, and if he report favorably, and the governor finds that it is made in good faith with intention to construct, he issues a proclamation, which is recorded with the secretary of state, and which authorizes the projectors to meet and organize at a first meeting, and when so organized they file with the secretary of state a written statement showing the date of organization, the amount of capital stock, the shares into which it is divided, signed by all the directors, and thereupon the company becomes a body corporate.

§ 8001. **New Hampshire.** The words "whether voluntary or otherwise" (p. 2) are omitted in the new Public Statutes.

§ 8003. **New Hampshire.** Under the new Public Statutes, the citation for N.H. in the third line should be Chapter 148, section 19; and the provisions of the general act itself are made subject to amendment. Insert N.H. before N.J. in the first line of the third paragraph.

§ 8004. **District of Columbia.** For "chapter" in the second line read "charter." The statute authorizing the Legislative Assembly to create corporations has, of course, been repealed. (See U.S. Statute 1874,337,1.)

§ 8005. **Maine.** A new statute provides for the organization of corporations created under special act as follows:—

"Before commencing business, the president, treasurer, and a majority of the directors of any corporation chartered by special act of the legislature, shall prepare a certificate setting forth the date of approval of its charter, the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and shall sign and make oath to it. Such certificate shall be recorded in the registry of deeds in the county where its principal office is to be located, . . . and a copy thereof, certified by such register, shall be filed in the secretary of state's office. . . . From the time of filing such certificate in the secretary of state's office, the stockholders of said corporation, their successors and assigns, shall be a corporation." Me. 1891,140,1.

§ 8010. **New York.** The old New York Corporation Act of 1875 has been repealed by the Corporation Acts of 1890, Chapters 564 to 567, and 1892,688-691. See also, Addenda, New York.

**New Hampshire.** Under the new Public Statutes of New Hampshire a corporation may be formed for any lawful purpose, except banking and railroads: N.H. 147,1.

**Texas.** And in Texas the power to organize for any lawful purpose under the general act has been done away with: Tex. 1891,101.

In the same states there are further changes, thus:—Corporations may be organized for burial purposes, town and village improvements, agricultural companies, homestead and building societies, religious, temperance, benevolent, and charitable purposes, educational corporations, hospitals or asylums, literary, scientific, library, music, and artistic purposes, and for planting forest trees, by the new Public Statutes of New Hampshire: N.H. 147,1. And, in Texas, land companies to deal in land in other states or countries, and corporations for the growing and dealing in seeds, plants, and trees, for receiving and selling cattle, for slaughtering, for preserving food, for canals, railways, navigation, railway bridges, wharfs, and docks, opera-houses, factories or manufacturing companies, electric light, heat, and power companies, companies to construct and maintain water power, companies for "gins," and for accumulation and loan of money, but not with banking or discounting privileges, trust companies, clearing-houses, companies for sports and athletics, and bicycle clubs may be formed. And also in Texas companies to run cotton compresses, and also for the purpose of buying and selling goods by wholesale; but in these last cases there must be at least ten incorporators, and no one person may own more than five hundred dollars of the stock: Tex. 1891,101.

In **Wisconsin** there is a new statute authorizing corporations under the general act for the purposes of locating, building, encouraging, and establishing manufactories and manufacturing establishments in cities and towns within the state: Wis. 1891,403.

**Virginia.** By a new statute, street railway corporations may not be organized in the ordinary way, and chartered by court, as in section 8021 provided, but must, apparently, be created by the legislature; and street railways chartered by the courts may no longer condemn lands: Va. 1892,323.

**Tennessee.** The new statute provides that plumbing, heating, steam, and gas-fitting companies may be organized under the general act: Tenn. 1891,118.

§ 8011. **New Hampshire.** The new Public Statutes adopt the principle that a corporation may not have a name already in use by an existing corporation: N.H. 147,3. And a name can only be changed by an act of the legislature.

§ 8012. **New York.** See Addenda to § 8010, above.

§ 8015. **New Hampshire.** Under the Public Statutes ordinary corporations may have a capital stock not exceeding one million dollars, and not less than one thousand dollars: N.H. 147,6; and the par value may not be more than five hundred dollars, nor less than twenty-five dollars.

So, in **Florida**, the par value may not be less than ten dollars: Fla. 1889,3907.

§ 8020. **New Hampshire.** The new Public Statutes provide for articles of incorporation, like the other states: N.H. 147,2.

§ 8021. **New Hampshire.** These articles may be filed by not less than five incorporators: N.H. 147,1.

§ 8022. **New Hampshire.** These articles must set forth the purpose of the corporation, its name, location, amount of capital stock, and names and residences of incorporators: N.H. 147,2.

**Missouri.** Corporations may provide in their articles for the issue of preferred stock, as in Wyoming: Mo. 1891,9,80.

**Maine.** Corporations created by special act must, before commencing business, file a certificate with the county recorder and the secretary of state, showing date of approval of charter, name, purposes, capital, amount paid in, and names and residences of stockholders: Me. 1891,140.

§ 8023. **New Hampshire.** The articles must be signed by the corporators: N.H. 146,2.

§ 8024. **Minnesota.** The citation here is to the old general statutes.

**New Hampshire.** Under the Public Statutes articles are to be recorded with the town clerk where the business is to be carried on, and a copy filed with the secretary of state: N.H. 147,4.

§ 8026. **New Hampshire, Maine.** The existence of the corporation dates from the filing of the articles, as in the other states, and in case of a special incorporation: N.H. 147; Me. 1891,140.

§ 8028. **Nebraska.** Failure to publish or record the articles renders the stockholders liable for corporate debts to the amount of their stock, and unpaid subscription in addition thereto, as in § 8080: Neb. 1891,13.

§ 8034. **New Hampshire.** The first meeting of corporations organized under the Public Statutes is called with seven days' personal notice to all stockholders: N.H. 148,4. And if all the stockholders are present, may be held without notice, or if they consent thereto in writing.

§ 8035. **New Hampshire.** Officers or directors must be elected at the first meeting, and a temporary clerk: N.H. 148,5.

§ 8040. **New Hampshire.** Corporations having no place of business in the state now file their returns of all kinds with the secretary of state: N.H. 150,15.

§ 8042. **New Hampshire.** Page 39. The law is unchanged, but the citation in the new Public Statutes should be to N.H. 148,12-14.

§ 8043. **New Hampshire.** Note *a*. Unless otherwise provided in the charter. And the citation to the general statutes should be N.H. 149,4.

§ 8044. **New Hampshire.** Such other officers may be elected as the by-laws prescribe; and change the citation for the election of the clerk to N.H. 148,10.

§ 8045. **New Hampshire.** Under the new Public Statutes one of the directors of dividend-paying corporations must be a citizen of the state, but only if the company has any stockholder in the state: N.H. 149,4. And the clerk must reside in the state.

**New Jersey.** By new statute, only one director of any corporation need be resident within the state: N.J. 1892,55.

§ 8050. **New Hampshire.** The citation to the new Public Statutes is N.H. 148,15.

§ 8051. **New Hampshire.** The citations to the new Public Statutes are to N.H. 148,16 & 17.

**New Jersey.** By a new statute, when by reason of the failure or neglect of directors to attend three successive meetings of the board, so as to give a quorum, the stockholders thereupon, and until a legal meeting of a quorum of such board be held, have power to act in place of such board of directors, and for such purpose special meetings of the stockholders may be called by any officer or by any three stockholders upon a three days' notice, and the action of the stockholders at such meeting shall be legal and binding upon the company: N.J. 1892,54.

§ 8056. **New Jersey.** Under a new Public Statute the by-laws may not prescribe more than a majority of stockholders necessary to a quorum: N.J. 1891,68.

§ 8057. **Maryland.** The statute is amended so that if notice is given for a canvass of votes as prescribed in section 8054, then no person shall vote at the election by proxy, unless he make oath to the same effect as required of stockholders holding stock: Md. 1892,594.

§ 8080. **Nebraska.** By the new Public Statutes stockholders are made liable for failure to give notice of the amount of the corporation debts to the extent of their unpaid subscription, and in addition thereto to the amount of their stock: Neb. 1891,13.

§ 8082. **Arkansas.** If the corporation fail to make annual return, the directors are individually liable for the debts, as in New York.

Insert "Ark. 1891,13" after "New York" in the third paragraph.

§ 8090. **New Jersey.** By new statute, any corporation existing under the general act may amend its articles, in any particular, in conformity with such general law, except as to the amount of capital stock, by calling a special meeting at any time within five years from the date of incorporation, and obtaining a vote of a majority of the stock thereto: N.J. 1892,1 & 195.

Any corporation incorporated under the general law may in one certificate change the name, increase or decrease the amount of capital stock, of the number of shares thereon, or its par value, by filing one amended certificate after obtaining the written consent of two thirds of the stock and the consent of the board of directors given at a general meeting, or at a special meeting called for the purpose, and expressed by a majority vote of the directors. The certificate containing such amendment to be recorded with the clerk of the county where is its principal office, within thirty days thereafter: N.J. 1892,2.

§ 8110. **Washington.** Insert at the end of paragraph (B). All the stock must now be subscribed before the corporation contracts debts or does business: Wash. 1891,116.

§ 8122. **New Jersey.** A certificate of increase of stock must be filed with the secretary of state, as in most other states: N.J. 1891,177.

§ 8130. **New York.** There is a new statute authorizing exchange of preferred stock of all kinds of corporations, as well as railroads. (See § 8621.)

**Missouri.** Under a new statute the articles of incorporation may provide for the issue of preferred stock, giving the names of subscribers, the amount taken, etc.: Mo. 1891, p. 80.

§ 8140. **Nebraska.** Insert in second paragraph, p. 101: Stockholders are now made liable for debts of the corporation to the amount of stock owned by them in addition to the amount unpaid on such stock: Neb. 1891,13.

§ 8142. **Nebraska.** The same law applies in case of a failure by the corporation to comply with the provisions as to organization, etc.: Neb. 1891,13.

§ 8145. **Arkansas.** There is a new statute regulating executions against capital stock, but it does not vary the law, except that in case of sale a corporation is bound to make the necessary transfer: Ark. 1891,21.

§ 8150. **New Jersey.** A new statute of New Jersey provides that, when any corporation by the terms of its articles has limited or restricted the free sale or transfer of its stock by requiring the company to fix upon the value of it, and giving to it or its directors a pre-emption upon or right to purchase such stock before transfer by the owner to a third person, or requiring an employee to hold his stock subject to such pre-emptive right or to sell the same to the company, such corporation shall have the power, by a two-thirds vote of its directors to alter or repeal any such restriction; and all the stockholders shall surrender their stock issued under the original certificate, and accept new stock without such restriction, and, if any stockholder refuse, the court shall appoint three appraisers to estimate the damage of such dissenting stockholder and the market value of his stock, and the company accordingly buy the same: N.J. 1891,46.

§ 8153. **Maine.** Whoever has a lien on or pledge of any stock or certificate thereof, bond, note, account, or other chose in action, or on any personal property in his possession, may enforce it by sale thereof, as hereinafter provided: Me. 1889,168.

§ 8157. **New Jersey.** A new statute provides elaborately for the issue of new certificates of stock in place of one lost, upon petition of the owner of the certificate to the circuit court, notice to the corporation, summary hearing, and order accordingly; such petitioner to deposit security or file bond in such form as the court shall deem sufficient to indemnify any other person who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen: N.J. 1892,89.

§ 8204. **Rhode Island.** In case any real or personal estate shall hereafter be given by will to any corporation to hold for any charitable uses or purposes authorized or permitted by the charter of said corporation or by law, and such corporation but for this act would not be able to take or hold the same or some part thereof on account of the limitation as to the amount of property of said corporation prescribed by the charter thereof, then in every such case it shall be lawful for such corporation to take



and hold such real and personal estate, or such part thereof as aforesaid, upon conditions subsequent, nevertheless, that such corporation shall obtain from the General Assembly authority to take and hold real and personal estate to an amount large enough to include in addition to its other property the property given to such corporation by will as aforesaid, and that the application to the General Assembly shall be made within one year from the final probate of the will under which the gift is taken as aforesaid: R.I. 1889,961.

**§ 8213. New Jersey.** Corporations incorporated under the provisions of an act approved April seventh, one thousand eight hundred and seventy-five, having for their general object or purpose the building, constructing, or repairing of railroads, water, gas, or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any or all such works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use, and dispose of stock or bonds in any corporation or corporations formed for the purpose of constructing, maintaining, and operating any such public works, with the same rights and privileges as individuals would be entitled to in like case; and it shall and may be lawful for the directors of any such corporation to accept in payment of any such subscription or purchase, property real or personal necessary for the purposes of such corporation or work, labor, and services performed, or materials furnished to or for such corporation for the uses and purposes thereof, to the amount of the value thereof, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments under any of the provisions of any act and said stock, shall have legibly stamped upon the face thereof " Issued for property purchased " : N.J. 1891,175.

**§ 8213.** See also §§ 8124, 8207.

**§ 8214.** See also § 8405.

**New Jersey.** Under a new statute any corporation of this state, whether under general or special act, may carry on and conduct its business outside of the state, although not so provided in the act or certificate of incorporation, provided only it have an office within the state of New Jersey: N.J. 1892,56.

**§ 8241. New Jersey.** By a new statute, in the case of the insolvency of any corporation, the laborers and work men, and all persons doing service of any character in the regular employ of such corporation, have a first and prior lien upon its assets for wages due for any labor or services performed within two months preceding the institution of insolvency proceedings, which lien is prior to any other liens upon such assets, except mortgages actually given and recorded more than two months before such date, or mortgages for money loaned or goods purchased within said period of two months, and except as against the lien of any real estate mortgage : N.J. 1892,273.

**§ 8265. Virginia.** Preliminary fees upon filing charter of association, or pending special acts of incorporation are imposed as follows : —

Five dollars for companies with capital stock under five thousand dollars.

Ten dollars, if from five thousand to ten thousand dollars.

Fifteen dollars, if from ten thousand to twenty-five thousand dollars.

Twenty-five dollars, if from twenty-five thousand to fifty thousand dollars.

Forty dollars, if from fifty thousand to one hundred thousand dollars.

Sixty-five dollars, if from one hundred thousand to three hundred thousand dollars.

Ninety dollars, if from three hundred thousand to five hundred thousand dollars.

One hundred and fifteen dollars, if from five hundred thousand to eight hundred thousand dollars.

One hundred and fifty dollars, if from eight hundred thousand to one million dollars.

Two hundred dollars, if for corporations with over one million dollars capital: Va. 1892,229.

**§ 8356. New Jersey.** By new statute, the directors of a dissolved corporation are authorized as trustees to sell its property, fix terms and conditions, and take mortgages not exceeding fifty per centum for the purchase price, under rules determined by a majority of said trustees: N.J. 1892,22.

**§ 8360. Delaware.** A new statute gives the chancellor jurisdiction to appoint, on the application of any creditor or stockholder, one or more receivers for any corporation with power to collect estate, prosecute suits, and do any other acts which may be done by any such corporation, and may be necessary and proper; the powers of such receivers to continue so long as the chancellor shall think advisable: Del. 1891,181.

**§ 8381. Maryland.** When certificates of consolidation have been recorded, all the property belonging to each corporation, rights and liabilities of all kinds, shall be devolved upon the consolidated corporation: Md. 1892,666.

**§§ 8400-8405. Tennessee.** The provisions of the Code, sections 1992-2003, are extended by a new statute to apply to foreign building and loan associations, bond and investment companies, real estate, land, labor, and immigration companies, co-operative associations, cotton compress and warehouse companies, electric light, gas, and power companies, and steam-power companies, stock-yards, cold-storage and packing companies, water-works, wrecking, and salvage companies: Tenn. 1891,95.

§ 8402. **Oklahoma.** Follows the law of Dakota as to foreign corporations filing charter in the state. Add "Oka. 1244" after "Ariz. 349," at the end of sixth paragraph on page 202.

**Tennessee.** A new statute provides that the provisions of the Act of 1877, Chapter 31, shall be so amended and enlarged as to apply to all kinds of foreign corporations desiring to do business in this state, and that such corporations shall file a copy of their charter with the secretary of state, and the recorder of the county where they propose to do business, under penalty of a fine, and that thereupon the corporation shall become to all intents and purposes a domestic corporation; and service of process against such corporation may be made by attachment on any property owned by it, in case the plaintiff can find no agent or attorney within the county: Tenn. 1891,122.

§ 8499. **Tennessee.** There is a new statute concerning building and loan companies: Tenn. 1891,2.

**Indiana.** There is a new statute providing for drove or stock-yard companies: Ind. 1891,193.

**Maryland.** There is a new statute regulating reports by safe-deposit and trust companies: Md. 1892,109.

§ 8532. **New Mexico.** The directors of a railroad company are chosen by the stockholders, "but are citizens of the United States": N.M. 2634.

§ 8537. **New Mexico** adopts the statute of Texas, that no by-law can be altered except at a regular meeting by two-thirds vote of the stockholders: N.M. 2632.

§ 8542. **New Mexico** follows the Arizona law, that directors named in the articles must meet and organize within five days after notice of election: N.M. 2636.

§ 8544. **New Mexico.** Officers making false reports are liable for damages caused thereby to any person injured: N.M. 2644.

§ 8550. **Tennessee.** The lien law of laborers, sub-contractors, and railways is amended and extended by a new statute; and it is still superior to the lien of any mortgage made before or after the labor is furnished: Tenn. 1891,98.

§ 8636. **South Carolina.** A new statute forbids the issuing of passes to members of the state legislature, members of Congress, or judges of courts of record. S.C. 1891,678.

§ 8641. **Ohio.** The statute of 1890 concerning issuing of bonds by railways is amended so as to allow companies formed by consolidation with companies of other states to issue bonds in excess of their capital stock: O. 1892, p. 83.

§ 8642. **Connecticut.** Mortgages by railroad companies need only be recorded with the secretary of state, and will cover after-acquired property: Ct. 3572.

§ 8711. **Tennessee.** Chapter 9 of the Acts of 1881 is amended as to the first revival of the second section, so as to read, "Provided that the same be approved by three-fourths vote of the capital stock at a regular or special meeting": Tenn. 1891,61.

§ 8713. **Maine.** Railroads may build branches to mines and quarries: Me. 1891,129.

§ 8721. **Tennessee.** Any railroad now existing under the laws of this state, or of this state and any other state, is, by a new statute, authorized to acquire the line of any other railroad within or without the state which may connect with it by purchase, lease, or otherwise, and pay for the same by the issue of their own stock and bonds, or by guaranteeing those issued by the company whose line may be so acquired; provided nothing in this act shall authorize the acquisition in any way of parallel or competing lines: Tenn. 1891,125.

§ 8723. **Ohio.** The statute of Ohio, section 3341, is considerably amended, providing for switching charges by persons or companies owning spur tracks not to exceed one dollar per car per half-mile: O. 1892, p. 369.

§ 8732. **Ohio. Consolidation of Railroads.** The statute is amended so that a stockholder who refuses to convert his stock into the stock of the consolidated company shall be paid the highest market value of such stock at any time within two years next preceding; and the provisions of consolidation apply only to stockholders of companies organized under the laws of Ohio, and not of other states: O. 1892, p. 88.

§ 8741. **Virginia.** The statute prohibiting a railroad to be located through a dwelling-house, or within sixty feet of it, without consent of the owner, is now modified to make such location possible when the commissioners decide that it would be otherwise impracticable to construct the railroad without unreasonable expense: Va. 1892,390.

§ 8816. **Tennessee.** By a new statute, section-masters of railroads are required to give notice of killing and injury to live stock by the trains to the owner of such stock, and thereupon their value is found by appraisers: Tenn. 1891,101.

§ 8827. **Ohio.** No railroad company is now permitted to require any engineer, or trainman, or telegraph operator, who has worked for fifteen consecutive hours, to go on duty again until he has had at least eight hours' rest: O. 1892, p. 311.

§ 8850. **Tennessee.** A new statute provides for separate accommodations in the cars for whites and blacks: Tenn. 1891,52.

§ 8950. **Maryland.** There is a new statute regulating the charges of telephone companies, not to exceed six dollars and fifty cents per month: Md. 1892,387.



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